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FEB - 1 2005

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BOARD OF COUNTY COMMISSIONERS OF
KANE COUNTY, UTAH

DEPUTY CLERK

Plaintiff

v.

GALE NORTON

Defendant.

*
* CASE NO. 2:05CV00074 JSr
*

*
* Appearing on behalf of:
*

*
* Plaintiff
* (Plaintiff/Defendant)
*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Shawn T. Welch hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: 1-30-05, 2005 Shawn Welch (#7113)
(Signature of Local Counsel) (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Brandon L. Jensen, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) x a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Shawn T. Welch as associate local counsel.

Date: January 24, 2005. Check here x if petitioner is lead counsel.

Brandon L. Jensen
(Signature of Petitioner)

Name of Petitioner: Brandon L. Jensen Office Telephone: (307) 632-5105
(Area Code and Main Office Number)

Business Address: Budd-Falen Law Offices, LLC
(Firm/Business Name)
300 East 18th Street Cheyenne WY 82001
Street City State Zip

2

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
Wyoming Supreme Court	Cheyenne, Wyoming	October, 2000
U.S. District Court of Wyoming	Cheyenne, Wyoming	October, 2000
Colorado Supreme Court	Denver, Colorado	October, 2000
U.S. District Court of Colorado	Denver, Colorado	March, 2001
10 th Circuit Court of Appeals	Denver, Colorado	March, 2001
9 th Circuit Court of Appeals	San Francisco, California	November, 2004
7 th Circuit Court of Appeals	Chicago, Illinois	November, 2004

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
Western Watersheds v. Carpenter	2:02CV-00352J	July 9, 2002

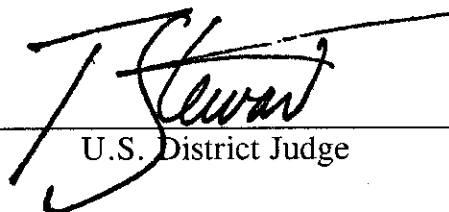
(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

FEE PAID

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 1st day of February, 2005.



U.S. District Judge

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00074

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Shawn T. Welch, Esq.
PRUITT GUSHEE
1800 BENEFICIAL LIFE TOWER
36 S STATE ST
SALT LAKE CITY, UT 84111-1495
EMAIL

Brandon L. Jensen, Esq.
BUDD-FALEN LAW OFFICES LLC
300 E 18TH ST
PO BOX 346
CHEYENNE, WY 82003-0846

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CLERK, U.S. DISTRICT COURT

2005 FEB - 1 P 1:03

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BOARD OF COUNTY COMMISSIONERS OF
KANE COUNTY, UTAH

BY: DEPUTY CLERK

Plaintiff

v.

GALE NORTON

Defendant.

* CASE NO. 2:05CV00074 JTC

*
* Appearing on behalf of:

* Plaintiff

* (Plaintiff/Defendant)

*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Shawn T. Welch, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: 1-30-05, 20

Shawn Welch
(Signature of Local Counsel)

(#7113)

(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Karen Budd-Falen, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) x a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Shawn T. Welch as associate local counsel.

Date: , 20 .

Check here if petitioner is lead counsel.

Karen Budd-Falen
(Signature of Petitioner)

Name of Petitioner: Karen Budd-Falen Office Telephone: (307) 632-5105

(Area Code and Main Office Number)

Business Address: Budd-Falen Law Offices, LLC

(Firm/Business Name)

300 East 18th Street

Street

Cheyenne

City

Wyoming

State

82001

Zip

3

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
Wyoming Supreme Court	Cheyenne, Wyoming	August 1987
Wyoming Federal District Court	Cheyenne, Wyoming	May 1987
10 th Circuit Court of Appeals	Denver, Colorado	September 27, 1990
U.S. Court of Federal Claims	Washington, D.C.	March 17, 1990
Court of Appeals for the Federal Circuit	Washington, D.C.	December 12, 1995
Colorado Federal District Court	Denver, Colorado	1998
U.S. Supreme Court	Washington, D.C.	1999

(If additional space is needed, attach separate sheet.)

continued - see pg. 2 attached

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
Western Watersheds Project	2:02CV-00352J	July 22, 2002

(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

FEE PAID

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 1st day of February, 2005.



U.S. District Judge

BAR ADMISSION HISTORY (continued)

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
<u>9th Circuit Court of Appeals</u>	<u>San Francisco, California</u>	<u>December 1998</u>
<u>Nebraska Federal District Court</u>	<u>Omaha, Nebraska</u>	<u>May 12, 2003</u>
<u>District of Columbia Federal District Court</u>	<u>Washington, D.C.</u>	<u>March 1, 2004</u>
<u>7th Circuit Court of Appeals</u>	<u>Chicago, Illinois</u>	<u>December 28, 2004</u>

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00074

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Shawn T. Welch, Esq.
PRUITT GUSHEE
1800 BENEFICIAL LIFE TOWER
36 S STATE ST
SALT LAKE CITY, UT 84111-1495
EMAIL

Brandon L. Jensen, Esq.
BUDD-FALEN LAW OFFICES LLC
300 E 18TH ST
PO BOX 346
CHEYENNE, WY 82003-0846

Karen Budd-Falen, Esq.
BUDD-FALEN LAW OFFICES LLC
300 E 18TH ST
PO BOX 346
CHEYENNE, WY 82003-0846
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -1 P 12:43
DISTRICT OF UTAH
DEPUTY CLERK

United States District Court

Northern Division for the District of Utah

Donna M. Holman

JUDGMENT IN A CIVIL CASE

v.

United States of America

Case Number: 1:02 CV 77 BSJ

This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that judgment be entered as follows:

(1) Hyrum Smith holds record title to a one-half undivided interest in the real property located at 177 West 1500 North, Centerville, Utah 84014 solely as a nominee for Kenneth T. Holman who is the actual and beneficial owner thereof, and

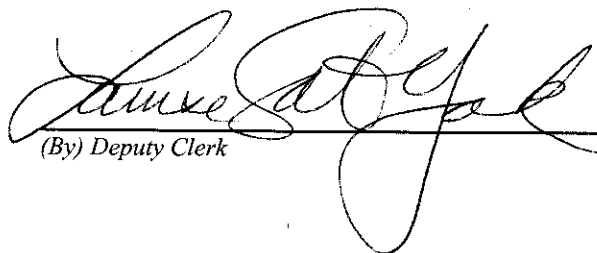
(2) that Donna Holman is the owner as tenant in common to a one-half undivided interest in the subject property.

February 1, 2005

Date

Markus B. Zimmer

Clerk


(By) Deputy Clerk

72

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:02-cv-00077

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. D. Williams Ronnow, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
301 N 200 E STE 3-A
ST GEORGE, UT 84770
JFAX 8,435,6285225

Hyrum W. Smith
150 WEST 1400 NORTH
GUNLOCK, UT 84733

James C. Haskins, Esq.
HASKINS & ASSOCIATES
357 S 200 E STE 300
SALT LAKE CITY, UT 84111-2827
EMAIL

Paul T. Moxley, Esq.
HOLME ROBERTS & OWEN LLP
299 S MAIN ST STE 1800
SALT LAKE CITY, UT 84111-2263
EMAIL

Jeannette F. Swent, Esq.
US ATTORNEY'S OFFICE
/ EMAIL

Rickey Watson, Esq.
US DEPARTMENT OF JUSTICE
555 4TH STREET NW
WASHINGTON, DC 20001
EMAIL

Anton L. Janik Jr., Esq.
US DEPARTMENT OF JUSTICE
TAX DIVISION
PO BOX 683
BEN FRANKLIN STATION
WASHINGTON, DC 20044

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JAN 27 2005

FILED

L. DAVID GRIFFIN (USB No. A7868)

JANNA L. JENSEN (USB No. 9677)

WORKMAN NYDEGGER

1000 Eagle Gate Tower

60 East South Temple

Salt Lake City, UT 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

2005 FEB -1 P 3:36

CLERK OF UTAH

BY: _____
DEPUTY CLERK

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

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JAN 28 2005

U.S. DISTRICT COURT

JOHN T. COX (*Pro Hac Vice*)

MARK E. TURK (*Pro Hac Vice*)

LYNN, TILLOTSON & PINKER, LLP

Dallas, Texas 75201

Telephone: (214) 981-3800

Facsimile: (214) 981-3839

Attorneys for Defendant

KJELL GAUSTAD,

President, ALPHAMED LTD.,

and ALPHAMED LTD.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BASIC RESEARCH, LLC,
a Utah limited liability company,

Plaintiff,

v.

KJELL GAUSTAD,
President, Alphamed Ltd.,
and ALPHAMED LTD.,
a Basel, Switzerland limited company,

Defendants.

Civil Action No. : 2:03CV00947-BSJ

~~PROPOSED~~ ORDER GRANTING
STIPULATED MOTION FOR
EXTENSION OF TIME

96

Pursuant to the parties' stipulation and good cause appearing:

IT IS HEREBY ORDERED that the Stipulated Motion for Extension of Time is hereby GRANTED. Defendants shall have until Friday, February 4, 2005 to submit the requested translated documents to the Court. The hearing scheduled for February 7, 2005 is hereby rescheduled for February 17, 2005 at 9:30 a.m.

Dated this 31 day of January, 2005

By 

The Honorable Bruce S. Jenkins
United States District Judge

JA161191\030 [Proposed] Order Granting Motion for Extension.doc

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00947

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James E. Magleby, Esq.
MILLER MAGLEBY & GUYMON PC
170 S MAIN ST STE 350
SALT LAKE CITY, UT 84101
EMAIL

Lorin David Griffin, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Mark E. Turk, Esq.
LYNN TILLOTSON & PINKER LLP
750 N ST PAUL ST STE 1400
DALLAS, TX 75201
EMAIL

John T. Cox III, Esq.
LYNN TILLOTSON & PINKER LLP
750 N ST PAUL ST STE 1400
DALLAS, TX 75201
EMAIL

Jeffrey N. Walker (USB #5556)
D. Miles Holman (USB#1524)
HOLMAN & WALKER
9533 South 700 East, Suite 100
Sandy, Utah 84070
Telephone: (801) 990-4990
Facsimile: (801) 990-4999
Email: info@holwalk.com

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CLERK, U.S. DISTRICT COURT

2005 FEB - 1 P 3: 38

OFFICE OF U.S. DISTRICT JUDGE
DISTRICT JUDGE BRUCE S. JENKINS

BY: _____
DEPUTY CLERK

ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

WILLIAM F. JEWETT, JR., et al,

Plaintiffs,

vs.

GRAND COUNTY, et al.

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
AND REVISED SCHEDULING ORDER**

**Civil No. 2:03cv00602
Judge Bruce S. Jenkins**

Defendants' Motion for Summary Judgment in the above matter having regularly come on for hearing, with notice, on January 14, 2005 at 9:30AM, before the Honorable Bruce S. Jenkins, United States District Court Judge. Plaintiffs appeared by and through their attorneys of record, Jeffrey N. Walker and D. Miles Holman of the law firm of Holman & Walker, LC. Defendants appeared by and through their counsel of record, Craig V. Wentz of the law firm of Christensen & Jensen, PC. The Court considered the written submissions filed by both parties, heard oral arguments in support of and in opposition to Defendants' Motion for Summary Judgment and being fully advised in the premises and for good cause shown

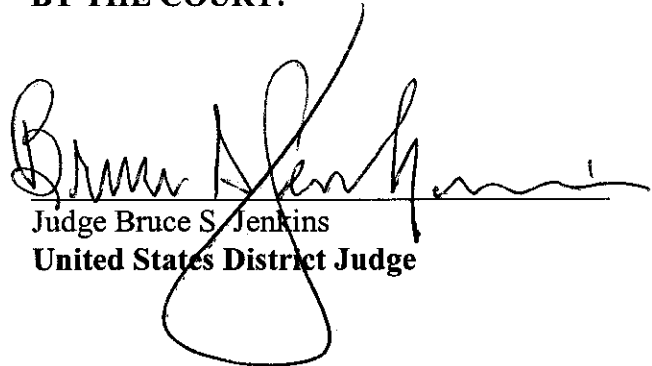
IT IS HEREBY ORDERED as follows:

42

1. Defendants' Motion for Summary Judgment should be and is hereby is denied.
2. The following revised Scheduling Order should be and is hereby entered:
 - a. Discovery cut-off: July 30, 2005
 - b. Motion cut-off: August 15, 2005
 - c. Pretrial Order submitted: October 17, 2005
 - d. Pretrial Conference: October 20, 2005 at 9:30AM

DATED this 31 day of January 2005.

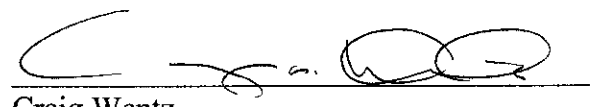
BY THE COURT:



Judge Bruce S. Jenkins
United States District Judge

APPROVED AS TO FORM:

CHRISTENSEN & JENSEN, PC



Craig Wentz
Attorneys for Defendants

1-26-05

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00602

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Craig V Wentz, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
EMAIL

Jeffrey N. Walker, Esq.
HOLMAN & WALKER
9537 S 700 E
SANDY, UT 84070
JFAX 9,9904999

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JAN 31 2005
U.S. DISTRICT COURT
ORIGINAL

Attorneys for Defendants

UNITED STATES OF AMERICA,

VS.

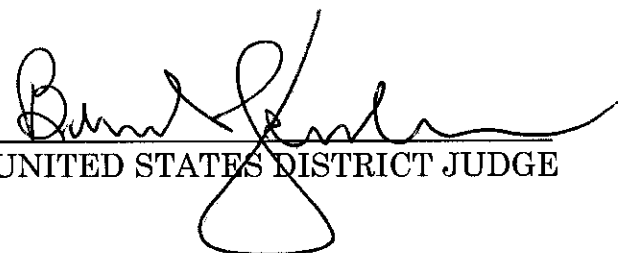
Case No. 2:04CV00733 BSJ

ORDER

Defendants.

The Court HEREBY GRANTS Defendants' Motion for Leave to File Over-
Length Opposition to Motion to Compel.

SO ORDERED this 1 day of Feb., 2005.


UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00733

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE

EMAIL

Arnold Allan Gordus Jr, Esq.
US DEPARTMENT OF JUSTICE
OFFICE OF CONSUMER LITIGATION
1331 PENNSYLVANIA AVE NW STE 950 N
WASHINGTON, DC 20004
EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

Larry R. Pilot, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel L. Russell Jr., Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

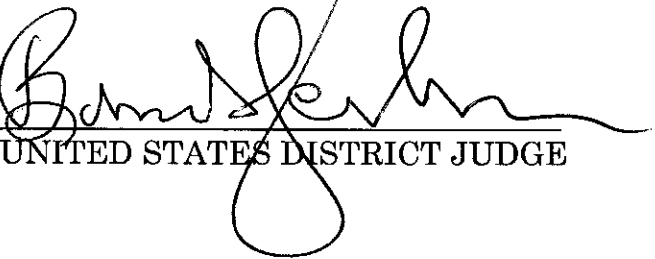
Donna M. Donlon, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel G. Jarcho, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006
EMAIL

57

The Court HEREBY GRANTS Defendants' Motion for Leave to File Over-
Length Memorandum in Support of Motion to Amend Answer to Assert
Counterclaim.

SO ORDERED this 1 day of February, 2005.


UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00733

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE

EMAIL

Arnold Allan Gordus Jr, Esq.
US DEPARTMENT OF JUSTICE
OFFICE OF CONSUMER LITIGATION
1331 PENNSYLVANIA AVE NW STE 950 N
WASHINGTON, DC 20004
EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

Larry R. Pilot, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel L. Russell Jr., Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Donna M. Donlon, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel G. Jarcho, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006
EMAIL

PEGGY E. STONE (6658)
PETER L. ROGNLIE (4131)
Assistant Utah Attorneys General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Judge Randall N. Skanchy
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

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OFFICE OF
JUDGE TENA CAMPBELL

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JAN 21 2005

U.S. DISTRICT COURT

RECEIVED

JAN 24 2005

BROOKE C. WELLS
U.S. MAGISTRATE

ORIGINAL

IN THE UNITED STATES DISTRICT COURT FOR
DISTRICT OF UTAH, CENTRAL DIVISION

JAMES DAVID BUSICO,

Plaintiff,

v.

CITIBANK (SOUTH DAKOTA) N.A. aka
AT&T UNIVERSAL CARD, MIKEL M.
BOLEY and RANDALL N. SKANCHY,

Defendants.

**ORDER GRANTING AN
ENLARGEMENT OF TIME FOR
RANDALL N. SKANCHY TO
ANSWER OR OTHERWISE RESPOND
TO PLAINTIFF'S COMPLAINT**

Case No. 2:04CV01178

Judge Tena Campbell

Magistrate Judge Brooke C. Wells

BASED upon *Randall N. Skanchy's Motion for an Enlargement of Time to Answer or Otherwise Respond to Plaintiff's Complaint*, Fed.R.Civ.P. 6(b)(1) and DUCivR 77-2(a)(2), and good cause appearing, the Court grants the motion. Randall N. Skanchy shall have up to and including February 7, 2005, to file an answer or other response to plaintiff's *Complaint*.

DATED this 1 day of January, 2005.

BY THE COURT:

Tena Campbell
TENA CAMPBELL
United States District Court Judge

10

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01178

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James David Busico
305 S 100 W
TOOLE, UT 84074

Erik A. Christiansen, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Matthew Mikel Boley, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Peggy E. Stone, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED
CLERK, DISTRICT COURT
2005 FEB -1 P 3:28p
E LLP
DISTRICT OF COLUMBIA
BY: _____
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OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

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JAN 11 2005

U.S. DISTRICT COURT

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

Plaintiff,

VS.

UTAH MEDICAL PRODUCTS, INC.,
a Corporation; and KEVIN L.
CORNWELL and BEN D. SHIRLEY,
individuals,

Defendants.

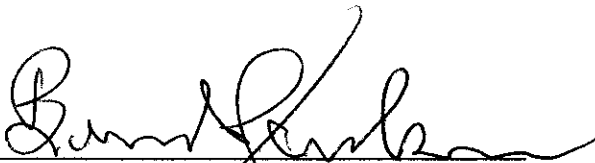
Case No. 2:04CV00733 BSJ

ORDER

58

The Court HEREBY GRANTS Defendants' Motion for Leave to File Amended
Answer to Assert Counterclaim.

SO ORDERED this 1 day of February, 2005.


UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00733

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Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE

EMAIL

Arnold Allan Gordus Jr, Esq.
US DEPARTMENT OF JUSTICE
OFFICE OF CONSUMER LITIGATION
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WASHINGTON, DC 20004
EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

Larry R. Pilot, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

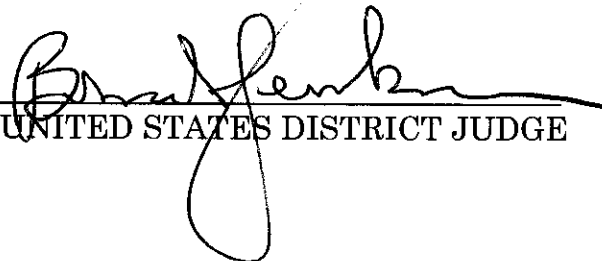
Daniel L. Russell Jr., Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Donna M. Donlon, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel G. Jarcho, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006
EMAIL

The Court HEREBY GRANTS Defendants' Motion to Seal Exhibit 7 to
Declaration of Edward J. McDonnell.

SO ORDERED this 1 day of February, 2005.


UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00733

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US DEPARTMENT OF JUSTICE
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WASHINGTON, DC 20004
EMAIL

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BURBIDGE & MITCHELL
215 S ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

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MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel L. Russell Jr., Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Donna M. Donlon, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006

Daniel G. Jarcho, Esq.
MCKENNA LONG & ALDRIDGE
1900 K ST NW
WASHINGTON, DC 20006
EMAIL

Thomas D. Carter
Leslie Hendrickson Hughes
Thomas M. Piccone
Attorneys for Plaintiff
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, Colorado 80202-2656
Telephone: (303) 844-1000

Thomas M. Melton
Securities and Exchange Commission
15 W. South Temple Street, Suite 1800
Salt Lake City, Utah 84101
Telephone: (801) 524-5796

RECEIVED

JAN 26 2005

OFFICE OF
JUDGE TENA CAMPBELL

RECEIVED

JAN 27 2005

BROOKE C. WELLS
U.S. MAGISTRATE

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -1 P 4:42

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK
RECEIVED CLERK

JAN 26 2005

U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

Securities and Exchange Commission

Plaintiff,

vs.

TenFold Corporation, et al.

Defendants.

*
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*
*
*
*
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*

Case No. 2: 03-CV-00442 TC
Judge Tena Campbell
Magistrate Judge Wells

ORDER STAYING DEPOSITIONS

Plaintiff Securities and Exchange Commission has filed a motion seeking a protective order pursuant to Fed. R. Civ. P. Rules 26(c) and 45(c)(3)(A)(iii) to quash subpoenas issued by defendant Kennedy for the depositions of three SEC employees on February 8, 10 and 11, 2005. Plaintiff asserts that the depositions will require the disclosure of privileged information and has requested that the depositions be stayed until the pending motion is resolved.

148

The Court finds there is good cause to delay the three depositions pending resolution of this motion and the related motion of defendant Kennedy seeking to compel production of documents which relate to the proposed depositions.

IT IS THEREFORE ORDERED that the depositions of Charles Lynch set for February 8, 2005, Kathleen Krebs set for February 10, 2005 and the Rule 30(b)(6) notice for the deposition of Lisa Mitrovich as designated by the SEC and set for February 11, 2005 are all stayed until ten days after resolution of the pending motion.

Dated this 1 day of January, 2005.

Feb

Brooke C. Wells

Brooke C. Wells
United States Magistrate Judge

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00442

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James S. Jardine, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

Irving M. Pollack, Esq.
DILWORTH PAXSON LLP
1818 N ST NW STE 400
WASHINGTON, DC 20036
EMAIL

Mr. Michael L Larsen, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Mr. Neil A. Kaplan, Esq.
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216
EMAIL

Stuart L. Gasner, Esq.
KEKER & VAN NEST LLP
710 SANSOME ST
SAN FRANCISCO, CA 94111
EMAIL

Darryl P. Rains, Esq.
MORRISON & FOERSTER LLP
425 MARKET ST
SAN FRANCISCO, CA 94105-2482
EMAIL

Mr. Thomas M Melton, Esq.

SECURITIES AND EXCHANGE COMMISSION
15 W SOUTH TEMPLE STE 1800
SALT LAKE CITY, UT 84101
EMAIL

Thomas M. Piccone, Esq.
SECURITIES AND EXCHANGE COMMISSION
1801 CALIFORNIA ST STE 1500
DENVER, CO 80202-2648
EMAIL

SCOTT C. WILLIAMS (6687)
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 220-0700
Facsimile: (801) 364-3232

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -1 P 3:42

DISTRICT OF UTAH

BY: _____
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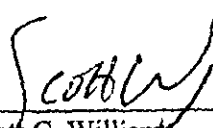
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	REQUEST TO STRIKE HEARING
	:	ON DEFENDANT'S MOTION TO
Plaintiff,	:	SUPPRESS
	:	
v.	:	
	:	
MATTHEW VINCENT HENRIOD,	:	Case No. 2:04 CR 473 DB
	:	
Defendant.	:	Honorable Dee Benson
	:	Magistrate Judge David Nuffer

ORDER

Defendant Matthew Henriod, through his attorney of record, Scott C. Williams, hereby requests that this Court strike the evidentiary hearing of Defendant's Motion to Suppress presently scheduled for February 11, 2005. The parties have reached a settlement agreement and are presently seeking a change of plea hearing before the Honorable Dee Benson.

Respectfully submitted this 19 day of January, 2005


Scott C. Williams
Attorney for Matthew

ORDER

IT IS HEREBY ORDERED that this motion (doc. 40) is GRANTED. The motion to suppress (doc. 13) is stricken.

February 1, 2005

By the Court:


David Nuffer
U.S. Magistrate Judge

43

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00473

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States District Court
for the District of UtahFILED
CLERK, U.S. DISTRICT COURT

Petition and Order for Action on Conditions of Pretrial Release

Name of Defendant: **Matthew John Chivers**Docket Number: **2:04-CR-00780-4 DB**

Name of Judicial Officer: Honorable Brooke C. Wells

BY: *[Signature]*
DEPUTY CLERKDate of Release: **December 13, 2004**

PETITIONING THE COURT

☒ To issue a summons 632 E. Redondo Ave. Salt Lake City, Utah 84105

CAUSE

The pretrial services officer believes that the defendant has violated the conditions of supervision as follows:

Allegation No. One: The defendant has failed to submit to drug testing as directed by pretrial services.**Allegation No. Two:** The defendant has failed to actively seek or maintain employment.

I declare under penalty of perjury that the foregoing is true and correct

[Signature]

Steve Mockli, U.S. Pretrial Services Officer

Date: January 31, 2005 *[Signature]*

THE COURT ORDERS:

- ☐ The issuance of a Summons
☒ The issuance of a Warrant
☐ No action
☐ Other

*[Signature]*Honorable Brooke C. Wells
United States Magistrate JudgeDate: 1/31/05

45

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00780

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S 150 E #800
SANDY, UT 84070-2702
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

Tracy Scott Cowdell (A9290)
ARMKNECHT & COWDELL, P.C.
32 East Main Street
Sandy, Utah 84070
Telephone: (801) 566-7765
Fax No.: (801) 566-7965
e-mail: tracy@tracycowdell.com

FILED
CLERK U.S. DISTRICT COURT
2005 FEB -2 A 8:44
BY: _____
DEPUTY CLERK

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FEB - 1 2005
U.S. DISTRICT COURT

Attorneys for Plaintiff
DISABLED RIGHTS ACTION COMMITTEE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

DISABLED RIGHTS ACTION
COMMITTEE, a Utah nonprofit corporation,

Plaintiff,

vs.

AT&T WIRELESS SERVICES OF UTAH,
INC., a Nevada corporation; AVEDA
ENVIRONMENTAL LIFESTYLE STORES,
a Delaware corporation; BANANA
REPUBLIC, INC., a Delaware corporation;
BATH & BODY WORKS, INC., a Delaware
corporation; THE BOMBAY COMPANY,
INC., a Delaware corporation; CHARLOTTE
RUSSE, INC., a California corporation; THE
CHILDREN'S PLACE RETAIL STORES,
INC., a Delaware corporation; CORRAL
WEST RANCHWEAR, INC., a Wyoming
corporation; CRICKET
COMMUNICATIONS, INC., a Delaware
corporation; DIAMOND WIRELESS, L.L.C.,
a Utah limited liability company; THE
EDDIE BAUER, INC., a Delaware
corporation; FOOT LOCKER STORES,
INC., a Delaware corporation; FRENZE, a
Utah retail store;

**ORDER OF DISMISSAL
WITH PREJUDICE**

Civil No. 2:03cv-0650TS

Judge Ted Stewart

GAMESTOP, INC., a Minnesota corporation;
THE GAP, INC., a Delaware corporation;
HOT DOG ON A STICK, a Utah business;
LADY FOOTLOCKER, a Utah retail store;
THE LIMITED STORES, INC., a Delaware
corporation; MOTHERHOOD MATERNITY
SHOPS, a Utah retail stores; OSIRIS BODY,
a Utah retail store; PAYLESS
SHOESOURCE, INC., a Missouri
corporation; PRECISION TIME, INC., a Utah
corporation; RADIOSHACK
CORPORATION, a Delaware corporation;
RAINBOW APPAREL COMPANIES, INC.,
a New York corporation; REGIS TRADE
SECRET, INC., a Colorado corporation; SAM
GOODY, a Utah retail store; SHAPIRO
LUGGAGE GIFTS & LEATHER, INC., a
Utah corporation; SPENCER GIFTS, INC., a
Delaware corporation; SUNCOAST
MOTION PICTURE COMPANY, INC., a
Delaware corporation; SUNGLASS HUT
TRADING CORPORATION, a Florida
corporation; THE TINDER BOX
INTERNATIONAL, LTD., a California
limited partnership; T-MOBILE U.S.A., INC.,
a Delaware corporation; VERIZON
WIRELESS, L.L.C., a Delaware limited
liability company; WILSONS LEATHER
HOLDINGS, INC., a Minnesota corporation;
ZUMIEZ, INC., a Delaware corporation;
DOES A-L; ROES CORPORATIONS A-L;
ROUSE-FASHION PLACE, L.L.C., a
Maryland limited liability company,

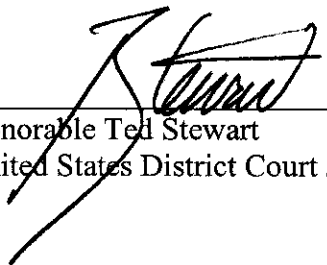
Defendants.

Based upon the motion of the plaintiff, and good cause appearing,

IT IS HEREBY ORDERED that the above-captioned matter be and hereby is dismissed against WILSONS LEATHER HOLDINGS, INC., a Minnesota corporation, with prejudice and on the merits, with each party to bear its respective costs and attorneys' fees.

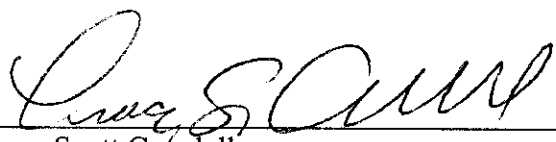
DATED this 1st day of February, 2005.

BY THE COURT:



Honorable Ted Stewart
United States District Court Judge

APPROVED AS TO FORM:



Tracy Scott Cowdell
ARMKNECHT & COWDELL, P.C.
Attorneys for Plaintiff

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00650

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Gregory M. Saylin, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Ms. Carolyn Cox, Esq.
HOLME ROBERTS & OWEN LLP
299 S MAIN ST STE 1800
SALT LAKE CITY, UT 84111-2263
EMAIL

K. Preston Oade, Esq.
HOLME ROBERTS & OWEN
1700 LINCOLN ST STE 4100
DENVER, CO 80203

Tracy Scott Cowdell, Esq.
ARMKNECHT & COWDELL PC
32 E MAIN ST
SANDY, UT 84070
EMAIL

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FEB - 7 2005

U.S. DISTRICT COURT

FILED
CLERK U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TANYA MARIE OLSEN

Defendant.

ORDER TO CONTINUE
JURY TRIAL

Case No. 2:04-CR-00779 TS

Based on the motion to continue the Jury Trial filed by defendant, Tanya Marie Olsen, in the above-entitled case, and good cause appearing, it is hereby:

ORDERED

The Jury Trial previously scheduled on February 7, 2005, is hereby continued to the 25th day of April, 2005, at 8:30 a.m.. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation.

Dated this 1st day of February, 2005.

BY THE COURT:


TED STEWART
United States District Court Judge

HB

jmr

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00779

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

A. Chelsea Koch, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr Richard P Mauro, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -2 A 8:44

BY: CLERK

Thomas D. Walk (5555)
Christian S. Collins (8452)
KIRTON & McCONKIE
Attorneys for Defendant
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 328-3600
Facsimile : (801) 321-4893
Email: twalk@kmclaw.com
ccollins@kmclaw.com

SO ORDERED


TED STEWART
United States District Judge

Date 2/1/05

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2005 JAN 31 P 5:25

U.S. DISTRICT COURT
DISTRICT OF UTAH

RECEIVED

JAN 31 2005

JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

KEITH H. DEBUS,

Plaintiff,

vs.

SAMSUNG SDS AMERICA,

Defendant.

**MOTION FOR ENLARGEMENT OF
TIME TO FILE DISPOSITIVE
MOTIONS**

Civil No. 03-CV-407 TS

Judge Ted Stewart
Chief Magistrate Judge Samuel Alba

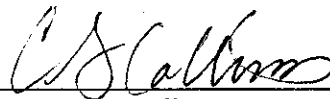
Defendant Samsung SDS America ("Samsung"), by and through its counsel of record,
Thomas D. Walk and Christian S. Collins of KIRTON & McCONKIE, hereby submits the
following Motion for Enlargement of Time to File Dispositive Motions. This Motion is brought

53

pursuant to Rule 6 and in accordance with Rule 7 of the Federal Rules of Civil Procedure and is supported by the accompanying memorandum.

DATED this 31st day of January, 2005.

KIRTON & McCONKIE

A handwritten signature in dark ink, appearing to read 'T. D. Walk', is written over a horizontal line.

Thomas D. Walk

Christian S. Collins

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2005, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME TO FILE DISPOSITIVE MOTIONS** was mailed through United States mail, postage prepaid, to the following:

Keith H. Debus
1780 West 9000 South, Suite #246
West Jordan, UT 84088

Colleen Wallace

12332-0002 806386

jmr

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00407

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Thomas D. Walk, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Keith H. Debus
1780 W 9000 S
STE 246
WEST JORDAN, UT 84088

SCOTT C. WILLIAMS (6687)
ATTORNEY FOR DEFENDANT
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801)220-0700
Facsimile: (801) 364-3232

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -2 A 8:44

DATE: JAN 25 2005
BY: _____
DEPUTY CLERK

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JAN 25 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER CONTINUING TRIAL
Plaintiff,	:	
v.	:	
INEKE MARIE DENNIS,	:	Case No. 2:04 CR 779 TS
Defendant.	:	JUDGE: Honorable Ted Stewart

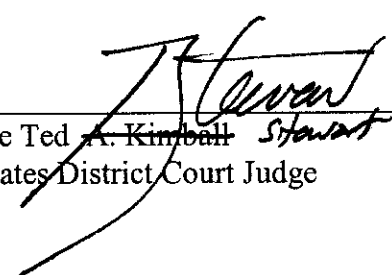
Based upon the Motion of defendant to continue the trial, the reasons stated therein, the agreement of the prosecution, and good cause appearing therefor, IT IS HEREBY ORDERED that the motion to continue the trial scheduled to begin on February 7, 2005 is GRANTED. The trial date will be re-scheduled with the cooperation and availability of counsel for the parties.

All time occasioned by this continuance and rescheduling of the trial date is excluded from the application of the Speedy Trial Act, as it is the defendant's motion and the bases for which it is sought are appropriate bases for continuance. The expressed needs of the parties supports the continuance of the trial, and therefore serves the ends of justice and outweighs the best interest of the public and defendants in a speedy trial, especially considering the best interest

W4

of the defendant in this matter.

DATED this 1st day of ~~January~~ ^{February}, 2005.



Honorable Ted A. Kimball
United States District Court Judge

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00779

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

A. Chelsea Koch, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr Richard P Mauro, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

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CLERK, U.S. DISTRICT COURT

2005 FEB -1 P 4:41

DISTRICT OF UTAH

BY: _____
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JAN 31 2005

BROOKE C. WELLS
U.S. MAGISTRATE

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
Peter H. Donaldson (9642)
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

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JAN 28 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

~~PROPOSED~~ ORDER GRANTING
DEFENDANT/COUNTERCLAIM
PLAINTIFF IBM'S EX PARTE MOTION
FOR LEAVE TO FILE SUR-REPLY

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

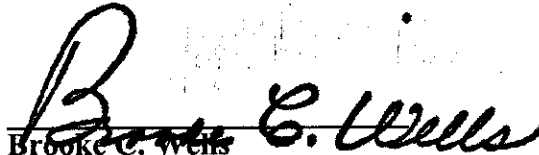
392

Based upon Defendant/Counterclaim-Plaintiff International Business Machines Corporation's ("IBM") Ex Parte Motion for Leave to File Sur-reply to SCO's Reply Memorandum in Support of Motion for Leave to File Third Amended Complaint, and for good cause appearing thereon,

IT IS HEREBY ORDERED that IBM may file a Sur-reply Memorandum in Response to SCO's Reply Memorandum in Support of Motion for Leave to File Third Amended Complaint, which shall be filed and served on or before February 18, 2005.

DATED this 1 day of ~~January~~ ^{February}, 2005.

BY THE COURT


Brooke C. Wells
U.S. Magistrate Judge

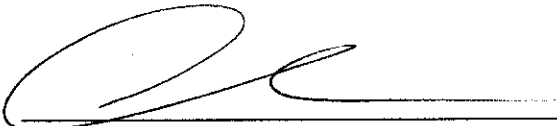
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504



Amy F. Sorenson

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent O. Hatch, Esq.
HATCH JAMES & DODGE
10 W BROADWAY STE 400
SALT LAKE CITY, UT 84101
EMAIL

Scott E. Gant, Esq.
BOIES SCHILLER & FLEXNER
5301 WISCONSIN AVE NW
WASHINGTON, DC 20015

Frederick S. Frei, Esq.
ANDREWS KURTH
1701 PENNSYLVANIA AVE NW STE 300
WASHINGTON, DC 20006

Evan R. Chesler, Esq.
CRAVATH SWAINE & MOORE
825 EIGHTH AVE
NEW YORK, NY 10019
EMAIL

Mr. Alan L Sullivan, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Todd M. Shaughnessy, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Mark J. Heise, Esq.
BOIES SCHILLER & FLEXNER
100 SE 2ND ST STE 2800
MIAMI, FL 33131

EMAIL

Mr. Kevin P McBride, Esq.
1299 OCEAN AVE STE 900
SANTA MONICA, CA 90401
EMAIL

Robert Silver, Esq.
BOIES SCHILLER & FLEXNER
333 MAIN ST
ARMONK, NY 10504

Stuart H. Singer, Esq.
BOIES SCHILLER & FLEXNER
401 E LAS OLAS BLVD STE 1200
FT LAUDERDALE, FL 33301
EMAIL

Mr. David W Scofield, Esq.
PETERS SCOFIELD PRICE
340 BROADWAY CENTRE
111 E BROADWAY
SALT LAKE CITY, UT 84111
EMAIL

Mr. Michael P O'Brien, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED

CLERK, U.S. DISTRICT COURT

February 1, 2005 (10:40am)

DISTRICT OF UTAH

TOM N. TURRELL,

Plaintiff,

vs.

INTERMOUNTAIN RIGGING & HEAVY
HAUL, et al.,

Defendants.


ORDER OF REFERENCE

Civil No. 2:05-CV-00081 TS

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Chief Magistrate Judge Samuel Alba. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 1st day of February, 2005.

BY THE COURT:


TED STEWART
United States District Judge

2

jmr

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00081

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Jennifer L. Falk, Esq.
CLAWSON & FALK LLC
2257 S 1100 E STE 105
SALT LAKE CITY, UT 84106
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -2 A 8:44

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JAN 28 2005

U.S. DISTRICT COURT

PAUL M. WARNER, United States Attorney (#3639)
JAN N. ALLRED, Assistant United States Attorney (#4741)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	O R D E R
)	
vs.)	
)	
ANTHONY DAVID LEICHTLE,)	Case No. 2:99CR00664-001
)	
Defendant,)	Honorable Ted Stewart

The Court, having received the Stipulation of the parties dated January 25, 2005, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on March 30, 2000 in the total sum of \$8,228.59 in favor of the United States of America (hereafter the "United States") and against Anthony David Leichtle (hereafter "Leichtle").

2. Leichtle has agreed to pay and the United States has agreed to accept monthly installment payments from him in the amount of \$100.00 commencing on the 15th day of February, 2005 and continuing thereafter on the 15th day of each month for a period of 12 months. At the end of said time period, and yearly thereafter,

39

Leichtle shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Leichtle.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Leichtle has agreed that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Leichtle understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.

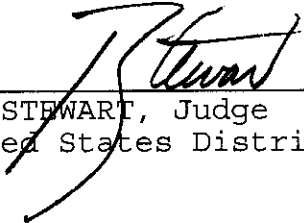
4. Leichtle shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

- a. Any change of address; and
- b. Any change in employment.

5. The United States has agreed to refrain from execution on the judgment so long as Leichtle complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Leichtle fails to comply strictly with the terms set forth in the Stipulation dated January 25, 2005, the United States may move the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of obtaining satisfaction of the judgment in full.

DATED this ^{1st} ~~25th~~ day of ~~January~~ ^{February}, 2005.

BY THE COURT:


TED STEWART, Judge
United States District Court

APPROVED AS TO FORM:


ANTHONY DAVID LEICHTLE
Defendant

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cr-00664

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

STEVEN B. KILLPACK, Federal Defender (#1808)
ROBERT K. HUNT, Assistant Federal Defender (#5722)
UTAH FEDERAL DEFENDER OFFICE
Attorney for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -1 P 4:33
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

RECEIVED CLERK
FEB - 1 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CUSTUDIO SOLORZANO-GONZALES,

Defendant.

**ORDER TO CONTINUE
JURY TRIAL**

Case No. 2:04CR-00070 DAK

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for February 8, 2005, is hereby continued to this 13th day of April, 2005, at 8:30 a.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date

31

of this order and the new trial date is excluded from speedy trial computation.

Dated this 15th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

HONORABLE DALE A. KIMBALL
United States District Court Judge

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00070

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

Brett J. DelPorto (6862)
Assistant Attorney General
Mark L. Shurtleff (4666)
Utah Attorney General
Attorneys for Respondent
160 East 300 South, 6th Floor
PO Box 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -1 P 4:41
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK
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RECEIVED CLERK
JAN 19 2005 JAN 18 2005
BROOKE C. WELLS
U.S. DISTRICT COURT
U.S. MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH - CENTRAL DIVISION

RICHARD HOLBERT,

Petitioner,

vs.

CLINTON FRIEL, et al.,

Respondent.

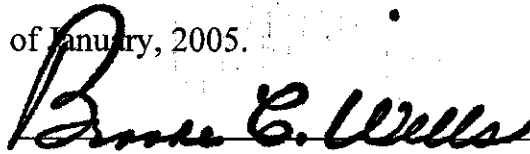
**ORDER GRANTING RESPONDENT'S
MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE TO PETITION
FOR POST-CONVICTION RELIEF**

Case No. 2:04CV00334 DAK

Judge Dale A. Kimball
Magistrate Judge Brooke C. Wells

On January 18, 2005, the respondent filed a motion for enlargement of time. Based upon the motion and good cause appearing therefore, the Court hereby grants Respondent's motion for enlargement of time and ORDERS that the Attorney General shall have up to and including January 25, 2005, to file a response to the Petition.

DATED this 25 day of January, 2005.

A handwritten signature in cursive script, reading "Brooke C. Wells", written over a horizontal line.

BROOKE C. WELLS
United States District Court Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January 2005, I mailed, postage prepaid, a copy of the foregoing MOTION FOR ENLARGEMENT OF TIME, together with the proposed order, to:

Richard Holbert
Central Utah Correctional Facility
PO Box 550
Gunnison, Utah 84634

A handwritten signature in black ink, appearing to read "Brett J. Delbert". The signature is written in a cursive, flowing style.

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00334

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Richard L. Holbert
CENTRAL UTAH CORRECTIONAL FACILITY
31416
PO BOX 550
GUNNISON, UT 84634

Criminal Appeals, Esq.
CRIMINAL APPEALS
160 E 300 S SIXTH FLOOR
PO BOX 140854
SALT LAKE CITY, UT 84114-0854
JFAX 9,3660167

Brett J. DelPorto, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

So Ordered
Stewart
2/1/05

FILED
CLERK U.S. DISTRICT COURT
2005 FEB 2 8:44
STAN 3 1 2005
JUDGE'S COPY

Eric C. Olson (#4108)
Kenneth W. Birrell (#9878)
KIRTON & McCONKIE
Attorneys for Defendant Veritas Software Corporation
60 East South Temple #1800
P.O. Box 45120
Salt Lake City, Utah 84145-0120
Telephone: (801) 328-3600
Facsimile (801) 321-4893

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

GARY B. FILLER and LAWRENCE
PERLMAN, trustees,

Plaintiffs,

v.

VERITAS SOFTWARE CORPORATION,

Defendant.

**STIPULATION AND MOTION FOR
EXTENSION OF TIME TO FILE
RESPONSE TO COMPLAINT**

Case No. 2:05CV00035 TS

Honorable Ted Stewart

ORDER

The plaintiffs Gary B. Filler and Lawrence Perman, Trustees of the TRA Rights Trust, and the defendant Veritas Software Corporation ("Veritas"), through their respective counsel, hereby stipulate that Veritas shall have through and including February 15, 2005 in which to file a response to the Complaint in this action served on Veritas on January 12, 2005.

9

Based on this stipulation, the parties jointly move the Court for entry of an order extending the time for response through February 15, 2005.

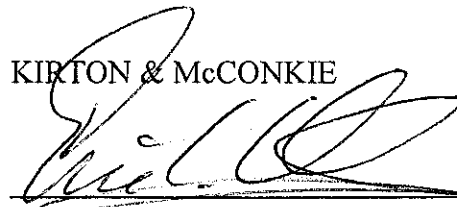
DATED this 26th day of January, 2005.

DORSEY & WHITNEY LLP



Milo Steven Marsden
Attorneys for Plaintiffs

KIRTON & McCONKIE



Eric C. Olson
Attorneys for Defendant

805398 0001-0377

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00035

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Milo Steven Marsden, Esq.
DORSEY & WHITNEY
170 S MAIN #900
SALT LAKE CITY, UT 84101
EMAIL

Perry M. Wilson III, Esq.
DORSEY & WHITNEY
50 S SIXTH ST
MINNEAPOLIS, MN 55420
EMAIL

Eric C. Olson, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Kim Marie Boylan, Esq.
LATHAM & WATKINS LLP
555 11TH STREET NW
WASHINGTON, DC 20004

FILED
CLERK, U.S. DIST. COURT

2005 FEB -2 A 10:17

MARY C. CORPORON #734
Attorney for Defendant
CORPORON & WILLIAMS, P.C.
808 East South Temple
Salt Lake City, Utah 84102
(801) 328-1162

RECEIVED CLERK

JAN 28 2005

U.S. DISTRICT COURT

IN THE UNITED STATES COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA	:	
	:	ORDER OF EXTENSION OF TIME
Plaintiff(s),	:	TO FILE MOTIONS
	:	
-vs-	:	Case No. 2:04-CR-544 TS
	:	
JOHN ROMAN,	:	Judge Ted Stewart
	:	Magistrate Judge David Nuffer
Defendant.	:	

BASED UPON THE sealed ex-parte motion of Defendant's counsel, Mary C. Corporon,
and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

The deadline for filing pre-trial motions is now set for Friday, January 28, 2005.

DATED THIS 2nd day of ~~January~~ ^{February}, 2005.

BY THE COURT



DAVID NUFFER
United States District Court Judge Magistrate

Handwritten initials: Hlo

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I caused a copy of the foregoing to be mailed to:

Michelle Wickham
US Attorney's Office
185 South State, #400
Salt Lake City, UT 84111

on the 25th day of January, 2005.



Secretary

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00544

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan D. Yeates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Ms. Mary C. Corporon, Esq.
CORPORON & WILLIAMS PC
808 E SOUTH TEMPLE
SALT LAKE CITY, UT 84102
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -21 A 11: 22

DEPUTY CLERK

BY: _____
DEPUTY CLERK

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**~~PROPOSED~~
ORDER GRANTING IBM'S EX PARTE
MOTION FOR EXTENSION OF TIME
TO SUBMIT OBJECTIONS TO
DISCOVERY ORDER**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

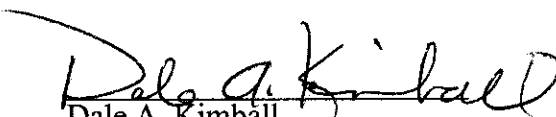
Based upon Defendant/Counterclaim-Plaintiff International Business Machines Corporation's ("IBM") Ex Parte Motion for Extension of Time to Submit Objections to Discovery Order, and for good cause appearing,

IT IS HEREBY ORDERED as follows:

1. IBM shall have until February 11, 2005, to file with the Magistrate Judge its Motion for Reconsideration/Clarification of the January 18, 2005, Discovery Order; and
2. IBM's objections to the discovery order under Federal Rule of Civil Procedure 72(a), if any, shall be due no later than 10 days after being served with a copy of the Magistrate Judge's order on that motion.

DATED this 15th day of February, 2005.

BY THE COURT


Dale A. Kimball
United States District Court

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2005, a true and correct copy of the foregoing was served by hand delivery to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504



United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent O. Hatch, Esq.
HATCH JAMES & DODGE
10 W BROADWAY STE 400
SALT LAKE CITY, UT 84101
EMAIL

Scott E. Gant, Esq.
BOIES SCHILLER & FLEXNER
5301 WISCONSIN AVE NW
WASHINGTON, DC 20015

Frederick S. Frei, Esq.
ANDREWS KURTH
1701 PENNSYLVANIA AVE NW STE 300
WASHINGTON, DC 20006

Evan R. Chesler, Esq.
CRAVATH SWAINE & MOORE
825 EIGHTH AVE
NEW YORK, NY 10019
EMAIL

Mr. Alan L Sullivan, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Todd M. Shaughnessy, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Mark J. Heise, Esq.
BOIES SCHILLER & FLEXNER
100 SE 2ND ST STE 2800
MIAMI, FL 33131

EMAIL

Mr. Kevin P McBride, Esq.
1299 OCEAN AVE STE 900
SANTA MONICA, CA 90401
EMAIL

Robert Silver, Esq.
BOIES SCHILLER & FLEXNER
333 MAIN ST
ARMONK, NY 10504

Stuart H. Singer, Esq.
BOIES SCHILLER & FLEXNER
401 E LAS OLAS BLVD STE 1200
FT LAUDERDALE, FL 33301
EMAIL

Mr. David W Scofield, Esq.
PETERS SCOFIELD PRICE
340 BROADWAY CENTRE
111 E BROADWAY
SALT LAKE CITY, UT 84111
EMAIL

Mr. Michael P O'Brien, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444

PAUL M. WARNER, United States Attorney (#3389)
TRINA A. HIGGINS, Assistant United States Attorney (#7349)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 524-5682

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB - 2 12:21

DISTRICT OF UTAH

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BY: _____
DEPUTY CLERK FEB - 1 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
	:	2:05 CR 0034 DKW
Plaintiff,	:	
	:	
vs.	:	ORDER GRANTING LEAVE OF
	:	COURT TO FILE A DISMISSAL
JESUS IRIBE,	:	
	:	
Defendant.	:	

Based upon the motion of the United States of America, and for the reason set forth therein, the Court hereby grants leave under Rule 48(a) of the Federal Rules of Criminal Procedure for the dismissal of the Indictment without prejudice.

DATED this 2 day of ^{Feb}January, 2005

BY THE COURT:

David K. Winder

DAVID K. WINDER
United States District Judge

7

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00034

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court
for the District of Utah

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 12 AM 10:33

Petition and Order for Action on Conditions of Pretrial Release

Name of Defendant: **Jesse Floyd Searle**

Docket Number: **2:04-CR-00385-001-TC**

Name of Judicial Officer: **Brooke C. Wells**

BY: 
DEPUTY CLERK

Date of Release: **June 25, 2004**

PETITIONING THE COURT

☒ To issue a warrant 8381 West 2910 South, Magna

CAUSE

The pretrial services officer believes that the defendant has violated the conditions of supervision as follows:

Allegation One: The defendant admitted to using methamphetamine on January 14, 2005.

Allegation Two: The defendant failed to submit to a scheduled drug test on January 28, 2005.

Allegation Three: The defendant was cited for Reckless Driving and other traffic violations on January 31, 2005.

Allegation Four: On January 31, 2005, the defendant attempted to tamper with his urine sample.

I declare under penalty of perjury that the foregoing is true and correct



Mindy Eckman, U.S. Pretrial Services Officer

Date: February 1, 2005

THE COURT ORDERS:

☒ The issuance of a Warrant

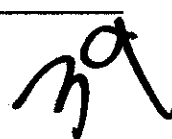
☐ No action

☐ Other



~~Brooke C. Wells~~ DAVID O. NUFFER
United States Magistrate Judge

Date: 1 Aug 2005



United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00385

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

COPY

RECEIVED

FILED
CLERK, U.S. DISTRICT COURT

JAN 27 2005

2005 FEB -2 A 9:14 OFFICE OF
JUDGE TENA CAMPBELL

Dennis R. James, No. 1642
Michelle H. Christensen, No. 10136
MORGAN, MINNOCK, RICE & JAMES, L.C.
Kearns Building, Eighth Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 531-7888
Fax number: (801) 531-9732

Attorneys for Plaintiffs

RECEIVED

DEPUTY CLERK

JAN 28 2005

BROOKE C. WELLS
U.S. MAGISTRATE

RECEIVED

JAN 27 2005

JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ORDER

FARM BUREAU LIFE INSURANCE
COMPANY and FARM BUREAU MUTUAL
INSURANCE COMPANY,

Plaintiffs,

v.

AMERICAN NATIONAL INSURANCE
COMPANY, AMERICAN NATIONAL
GENERAL INSURANCE COMPANY,
AMERICAN NATIONAL PROPERTY &
CASUALTY COMPANY and DARRIN IVIE,

Defendants.

DARRIN IVIE,

Counterclaim Plaintiff,

v.

FARM BUREAU LIFE INSURANCE
COMPANY and FARM BUREAU MUTUAL
INSURANCE COMPANY,

Counterclaim Defendants.

: STIPULATION FOR EXTENSION
: OF TIME FOR PLAINTIFF FARM
: BUREAU TO RESPOND TO DARRIN
: IVIE'S FIRST SET OF REQUESTS
: FOR ADMISSION,
: INTERROGATORIES, AND
: REQUESTS FOR PRODUCTION OF
: DOCUMENTS TO PLAINTIFFS.

: Civil No. 2:03 CV 00646 TC

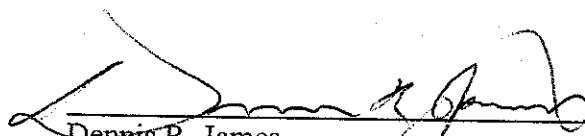
: Honorable Tena Campbell

57

Plaintiffs Farm Bureau Life Insurance Company and Farm Bureau Mutual Insurance Company (hereinafter collectively referred to as "Farm Bureau") and Defendant Darrin Ivie, by and through their respective counsel of record, hereby stipulate and agree that Farm Bureau may have an extension of time through and including Wednesday, February 16, 2005, in which to respond to Darrin Ivie's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents to Plaintiffs.


DATED this 24 day of January, 2005.

MORGAN, MINNOCK, RICE & JAMES, L.C.



Dennis R. James
Michelle H. Christensen
Attorneys for Plaintiffs Farm Bureau

DATED this 26th day of January, 2005.

PARR WADDOUPS BROWN GEE & LOVELESS


Jonathan O. Hafen
Matthew J. Ball
Attorneys for Defendant Ivie

SO ORDERED


BROOKE C. WELLS
U.S. Magistrate Judge

Date 2-1-2005

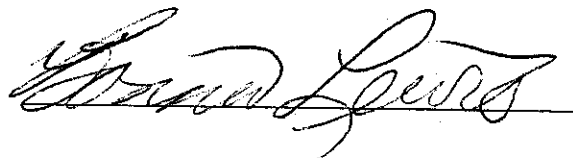
CERTIFICATE OF MAILING

I hereby certify that on this 26 day of January, 2005, I caused a true and correct copy of the foregoing **STIPULATION FOR EXTENSION OF TIME FOR PLAINTIFF FARM BUREAU TO RESPOND TO DARRIN IVIE'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS** to be mailed via first-class mail, postage prepaid, to the following:

Jonathan O. Hafen
Matthew J. Ball
PARR WADDOUPS BROWN GEE & LOVELESS
185 S. State St., Ste. 1300
Salt Lake City, UT 84111
Attorneys for Defendant Darrin Ivie

Lawrence E. Stevens
Derek Langton
John E. Delaney
PARSONS BEHLE & LATIMER
One Utah Center
201 S. Main St., Ste. 1800
P.O. Box 45898
Salt Lake City, UT 84145-0898
Attorneys for Defendant American National Insurance Company

Jeannine Bennett
Jeannine Bennett, P.C.
136 S. Main St., Ste. 421
Salt Lake City, UT 84101
Attorney for Defendants American National General Insurance Company and
American National Property & Casualty Company



United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00646

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stephen G Morgan, Esq.
MORGAN MINNOCK RICE & JAMES
136 S MAIN STE 800
SALT LAKE CITY, UT 84101
JFAX 9,5319732

Mr. Jonathan O. Hafen, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

Mr. Lawrence E Stevens, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

M. David LeBlanc, Esq.
GREER HERZ & ADAMS LLP
1 MOODY PLAZA 18TH FLOOR
GALVESTON, TX 77550

Jeannine Bennett, Esq.
136 S MAIN #421
SALT LAKE CITY, UT 84101
EMAIL

**BENDER, CROCKETT, PETERSON,
GREENWOOD & CASEY, PC**

Evelyn J. Furse (8952)
170 South Main Street, Suite 400
Salt Lake City, UT 84101
Telephone: (801) 533-8383
Facsimile: (801) 531-1486

Attorneys for Defendant Fidelity
Investments Institutional
Operations Company, Inc.

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -21 A 11: 51

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RECEIVED CLERK
FEB - 1 2005
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

RICH HANNON,

Plaintiff,

vs.

SIEMENS CORPORATION; SIEMENS
SAVINGS PLAN, fka PYRAMID
TECHNOLOGY CORPORATION 401(k)
PLAN; HEWITT ASSOCIATES, L.L.C.; and
FIDELITY INVESTMENTS INSTITUTIONAL
SERVICES COMPANY, INC.,

Defendants.

**[PROPOSED] ORDER TO
EXTEND TIME**

Civil No. 2:04CV00666DAK
Judge Dale A. Kimball


Based upon the Stipulation to Extend Time submitted by Fidelity Investments
Institutional Operations Company, Inc. ("Fidelity"), THIS COURT HEREBY ORDERS AS
FOLLOWS:

Fidelity shall have to and including February 15, 2005 in which to file its responsive
pleading to the Amended Complaint.

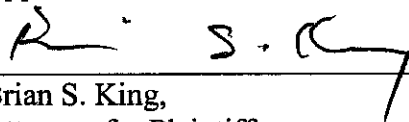
17

DATED this 2d day of February, 2005.

BY THE COURT:

By 
Honorable Dale A. Kimball
District Court Judge

Approved as to form:

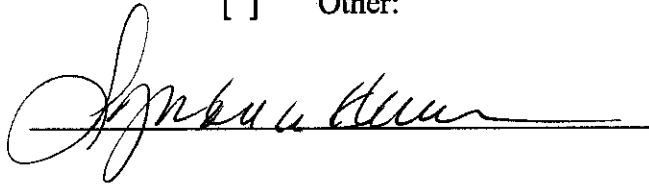

Brian S. King,
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of February, 2005, a true and correct copy of the foregoing [Proposed] Order to Extend Time was served upon the person(s) named below, at the address set out below their name, either by mailing postage prepaid, hand-delivery, Federal Express or by telecopying to them.

Brian S. King
336 South 300 East, Suite 200
Salt Lake City, UT 84111

☒ U.S. Mail
☐ Federal Express
☐ Hand-Delivery
☐ Telefacsimile
☐ Other:



United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00666

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Brian S King, Esq.
336 S 300 E STE 200
SALT LAKE CITY, UT 84111
EMAIL

Evelyn J. Furse, Esq.
BENDINGER CROCKETT PETERSON GREENWOOD & CASEY
170 S MAIN STE 400
SALT LAKE CITY, UT 84101-1664
JFAX 9,5311486

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -2 A 11: 21

DEPT. OF JUSTICE

BY: DEPUTY CLERK

RECEIVED CLERK

FEB - 7 2005
U.S. DISTRICT COURT

REED M. MARTINEAU (A2106)
REX E. MADSEN (A2052)
SHAWN E. DRANEY (A4026)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants 59.87 Acres of Land, Doyle and
Mark Wilson Farm, and Any Unknown Owners
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Telecopy: (801) 363-0400

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

59.87 (NOW 75.79) ACRES OF LAND, More
or Less, SITUATED IN WASATCH COUNTY,
STATE OF UTAH; DOYLE AND MARK
WILSON FARM, A PARTNERSHIP;
WASATCH COUNTY TREASURER; and any
UNKNOWN OWNERS claiming an interest in
said Parcel no. PRRP-24 (Fee),

Defendants.

**ORDER ON STIPULATION AND
JOINT MOTION TO NOT
REINVEST THE INITIAL
DEPOSIT AND TO HOLD IT IN
THE OFFICE OF THE COURT
CLERK**

Civil No. 2:02CV-0026 DAK

Judge Dale A. Kimball

Based upon the Stipulation and Joint Motion of the parties for an Order concerning the
initial deposit of \$2,160,000.00 made by Plaintiff at the initial filing of this condemnation action


96

pursuant to 40 U.S.C. § 258a as the government's estimated just compensation for the property that is the subject of this condemnation action, together with accrued interest, and good cause appearing for the same,

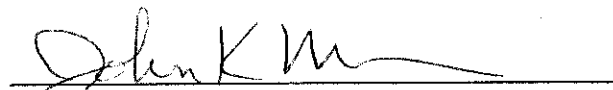
IT IS HEREBY ORDERED, that the Financial Administrator in the Office of the Clerk of this Court, not reinvest said deposit of \$2,160,000.00 made by Plaintiff pursuant to 40 U.S.C. § 258a, together with accrued interest, and that said deposit and accrued interest be held in the office of the Clerk of this Court pending further instruction of the Court upon proper application by the parties in interest.

DATED this 15th day of February, 2005.

BY THE COURT:


HONORABLE, DALE A. KIMBALL
United States District Judge

APPROVED:


John K. Mangum
Daniel D. Price
Assistant United States Attorneys
Counsel for Plaintiff United States of America

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00026

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John K Mangum, Esq.
US ATTORNEY'S OFFICE

EMAIL

Mr. Reed L Martineau, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

Michael Duncan
Financial Administrator
US DISTRICT COURT, DIST UT
350 S MAIN ST
SALT LAKE CITY, UT 84101

FILED
CLERK U.S. DISTRICT COURT

2005 FEB -2 A 11: 21

VAN COTT, BAGLEY, CORNWALL & MCCARTHY

Stephen K. Christiansen (6512)
Jessica Stengel (8915)
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145-0340
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

RECEIVED CLERK
JAN 31 2005
U.S. DISTRICT COURT
BY: _____
DEPUTY CLERK

THELEN REID & PRIEST LLP
David B. Ritchie (*Pro Hac Vice*)
Robert E. Camors, Jr. (*Pro Hac Vice*)
J. David Gilmer (*Pro Hac Vice*)
Ahmed Kasem (*Pro Hac Vice*)
225 West Santa Clara Street, Suite 1200
San Jose, CA 95113-1723
Tel. 408.292.5800
Fax 408.287.8040

Attorneys for Plaintiff
SONIC INNOVATIONS, INC.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SONIC INNOVATIONS, INC.,

Plaintiff,

vs.

STARKEY LABORATORIES, INC., and
MICRO EAR TECHNOLOGY, INC.,

Defendants.

Case No.: 2:03CV00670 DAK

AMENDED SCHEDULING ORDER

The Court, having considered the Joint Motion of the parties, now orders the following matters scheduled in the June 10, 2004 Scheduling order to be amended as follows:

I.	PLEADINGS/MOTIONS:	Original Date	Proposed Date
a.	Last Day to File Dispositive Motions	8/8/05	11/7/05

II. DISCLOSURE

a.	Rule 26(a)(2) Reports from Retained Experts		
	Party having burden of proof on a claim and/or defenses as framed by the pleadings	4/29/05	7/29/05
	Rebuttal reports	5/26/05	8/26/05
	Expert depositions	6/24/05	9/23/05
b.	Rule 26(a)(3) Pretrial Disclosures		
	Plaintiff(s)	11/7/05	2/6/06
	Defendant(s)	11/21/05	2/20/06

III.	DISCOVERY COMPLETED BY	4/1/05 – fact	7/1/05
		6/24/05 – expert	9/23/05

IV. PRETRIAL CONFERENCES

a.	Special Attorney Conference on or before	12/5/05	3/6/06
b.	Settlement Conference on or before	12/5/05	3/6/06
c.	Final Pretrial Conference	12/19/05	3/20/06 at 2:30 p.m.

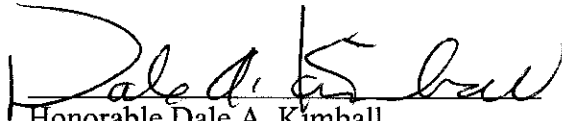
V. TRIAL

a. Jury Trial

1/9/06

4/10/06

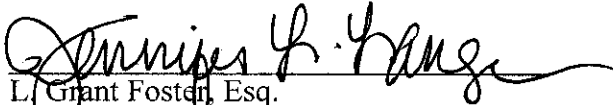
DATED this 15th day of February, 2005.


Honorable Dale A. Kimball
U.S. District Court Judge

APPROVED AS TO FORM:

HOLLAND & HART LLP

By:


L. Grant Foster, Esq.
Jennifer L. Lange, Esq.

Attorneys for Defendants and Counterclaimants
STARKEY LABORATORIES, INC. and
MICRO EAR TECHNOLOGY, INC.

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00670

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

L Grant Foster, Esq.
HOLLAND & HART
60 E SOUTH TEMPLE STE 2000
SALT LAKE CITY, UT 84111-1031
EMAIL

Jennifer L. Lange, Esq.
HOLLAND & HART
60 E SOUTH TEMPLE STE 2000
SALT LAKE CITY, UT 84111-1031
EMAIL

Becky R. Thorson, Esq.
ROBINS KAPLAN MILLER & CIRESI LLP
2800 LASALLE PLAZA
800 LASALLE AVE
MINNEAPOLIS, MN 55402-2015
EMAIL

Scott P. Fink, Esq.
ROBINS KAPLAN MILLER & CIRESI LLP
2800 LASALLE PLAZA
800 LASALLE AVE
MINNEAPOLIS, MN 55402-2015
EMAIL

Ronald J. Schutz, Esq.
ROBINS KAPLAN MILLER & CIRESI LLP
2800 LASALLE PLAZA
800 LASALLE AVE
MINNEAPOLIS, MN 55402-2015

Stephen K. Christiansen, Esq.
VAN COTT BAGLEY CORNWALL & MCCARTHY
50 S MAIN STE 1600
PO BOX 45340
SALT LAKE CITY, UT 84145
EMAIL

Bradley M. Strassberg, Esq.

VAN COTT BAGLEY CORNWALL & MCCARTHY
50 S MAIN STE 1600
PO BOX 45340
SALT LAKE CITY, UT 84145

David Ritchie, Esq.
THELEN REID & PRIEST LLP
225 W SANTA CLARA ST STE 1200
SAN JOSE, CA 95113
EMAIL

FILED
CLERK U.S. DISTRICT COURT

2005 FEB -2 A 11:21

United States District Court District of Utah

UNITED STATES OF AMERICA

vs.

Brian Hugh Turner

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 1:04-CR-00086-001 DAK

Plaintiff Attorney: Karen Fojtik, AUSA

Defendant Attorney: Thomas A. Jones

Atty: CJA ___ Ret ☒ FPD ___

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: 11661-081

Defendant's Residence Address: _____

Country USA

February 1, 2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

Same

Country USA

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP 09/29/04 Verdict

2 of the Indictment.

Title & Section

18 USC. §2252(a)(5)(B)

Nature of Offense

Possession of Child Pornography

Count

Number(s)

2

Entered on docket

2-2-05 by:

Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 1 (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **41 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **48 months.**

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

16

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☒ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the U.S. Probation Office.
2. The defendant shall register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the U.S. Probation Office. The Court orders that the presentence report may be released to the state agency for purposes of sex offender registration.
3. The defendant shall participate in a mental health and/or sex offender treatment program as directed by the U.S. Probation Office.
4. The defendant shall not possess or use a computer with access to any on-line computer service without the prior written approval of the Court. This includes any Internet service provider, bulletin board system, or any other public or private computer network. Any approval by the Court shall be subject to the conditions set by the Court or the U.S. Probation Office.
5. The defendant shall not view or otherwise access pornography in any format.
6. The defendant shall submit to the collection of a DNA sample at the direction of the Bureau of Prisons or the U.S. Probation Office.
7. The defendant shall report the address where he will reside and any subsequent change of residence to the probation officer responsible for supervision.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	------------------------------------------

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____

pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

CUSTODY/SURRENDER

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

☒ The defendant shall report to the institution designated by the Bureau of Prisons by Noon Institution's local time, on February 28, 2005.

DATE: February 2, 2005

Dale A. Kimball
Dale A. Kimball

United States District Judge

Defendant: Brian Hugh Turner
Case Number: 1:04-CR-00086-001 DAK

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00086

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. Thomas A Jones, Esq.
211 E 300 S STE 217
SALT LAKE CITY, UT 84111

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

United States District Court
District of Utah

2005 FEB -2 AM 11:21

CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

vs.

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

DEPUTY CLERK

Bryan Holiday

aka Bryan Holliday

Case Number: **2:04-CR-00504-001 DAK**

Plaintiff Attorney: **Richard McKelvie, AUSA**

Defendant Attorney: **Chelsea Koch**

Atty: CJA ___ Ret ___ FPD ☒

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **11679-081**

Defendant's Residence Address: _____

February 1, 2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

Country **USA**

Country **USA**

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP **02/01/05** Verdict _____

2 of the Indictment.

Title & Section
18 U.S.C. §924(c)

Nature of Offense
Brandishing a firearm during a crime of violence

Count
Number(s)
2

Entered on docket

2-2-05 by:

[Signature]
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) **1** (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **84 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **60 months.**

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

27

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall submit to the collection of a DNA sample at the direction of the Bureau of Prisons or the U.S. Probation Office.
2. The defendant shall submit to drug/alcohol testing at the direction of the U.S. Probation Office and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment provision, as directed by the U.S. Probation Office.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	------------------------------------------

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

Defendant: Bryan Holiday
Case Number: 2:04-CR-00504-001 DAK

Page 4 of 5

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to FCI Phoenix AZ or as close to there as possible to facilitate family visitation.

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

February 2, 2005


Dale A. Kimball

United States District Judge

Defendant: Bryan Holiday
Case Number: 2:04-CR-00504-001 DAK

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00504

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Richard D McKelvie, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

A. Chelsea Koch, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED
CLERK U.S. DISTRICT COURT
2005 FEB -2 A 9:06
BY: V
DEPUTY CLERK

JEANNINE SLAYMAKER

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security Administration,

Defendant.

Case No. 2:04-CV-177 SA

**MEMORANDUM DECISION AND
ORDER**

Before the Court is an action filed by Plaintiff, Jeannine Slaymaker, asking the Court to reverse the final agency decision denying her application for Disability Insurance Benefits (hereafter referred to as "DIB") under Title II of the Social Security Act. See 42 U.S.C.A. § 401-433 (2003 & Supp. 2004). Plaintiff's application was denied because the Administrative Law Judge (hereafter referred to as "ALJ") found that although Plaintiff is unable to return to her past relevant work, she is capable of making an adjustment to work that exists in significant numbers in the national economy, and therefore is not disabled. Plaintiff now challenges the ALJ's decision by arguing that the decision did not include: (1) an appropriate analysis both of Listing 12.04 and of listing equivalence; (2)

13

consideration of all the evidence; and (3) an appropriate pain analysis. The Court has carefully considered the memoranda and the complete record in this matter, and concludes that the ALJ's decision is both supported by substantial evidence in the record and is not legally erroneous. As a result, the ALJ's decision is affirmed.

BACKGROUND

Plaintiff applied for DIB in August 2001. (File Entry #4, The Certified Copy of the Transcript of the Entire Record of the Administrative Proceedings Relating to Jeannine J. Slaymaker (hereafter referred to as "Tr. ___") at 56-59.) Plaintiff's alleged onset date is March 2000. (Tr. 23, 321.) Plaintiff's claim was denied at the initial and reconsideration levels of administrative review. (Tr. 37-39, 41-43.) Plaintiff then requested a hearing before an ALJ. (Tr. 44.) The hearing before the ALJ was held on September 17, 2003. (Tr. 318-373.)

In his October 22, 2003 decision, the ALJ denied Plaintiff's claim, finding that although Plaintiff could not return to her past relevant work, Plaintiff was able to perform a significant number of jobs that exist in the national economy. (Tr. 29-32.) The Appeals Council denied Plaintiff's subsequent request for review. (Tr. 4-6.)

On February 16, 2004, after receiving the Appeals Council's denial of her request for review, Plaintiff filed the instant action, and the case was assigned to United States District Judge

Dale A. Kimball. (File Entry #1.) On March 25, 2004, Judge Kimball referred the case to United States Magistrate Judge Samuel Alba pursuant to 28 U.S.C. § 636(b)(1)(B). (File Entry #2.) Defendant then filed her answer, along with the administrative record, on April 16, 2004. (File Entries #3-4.)

On May 4, 2004, Defendant filed an unopposed joint statement consenting to have the magistrate judge conduct all proceedings and enter the final judgment in this case pursuant to 28 U.S.C. § 636(c). (File Entry #6.) Judge Kimball then filed a new order of reference on May 10, 2004, referring the case to Magistrate Judge Alba pursuant to 28 U.S.C. § 636(c). (File Entry #7.)

On June 4, 2004, Plaintiff filed her memorandum. (File Entry #10.) On July 29, 2004, Defendant filed her memorandum. (File Entry #11.) On August 16, 2004, Plaintiff filed her reply memorandum. (File Entry #12.) The Court has determined that oral argument would not be helpful in this case and has elected to determine Plaintiff's case on the basis of the written materials submitted to the Court. See DUCivR 7-1.

STANDARD OF REVIEW

The Court reviews the Commissioner's decision to determine "whether the factual findings are supported by substantial evidence in the record and whether the correct legal standards were applied." *Doyal v. Barnhart*, 331 F.3d 758, 760 (10th Cir. 2003). The Court may "neither reweigh the evidence nor

substitute [its] judgment for that of the agency.'" *White v. Barnhart*, 287 F.3d 903, 905 (10th Cir. 2001) (citation omitted).

ANALYSIS

The Plaintiff presents three main arguments in challenging the ALJ's finding. Plaintiff argues that: (1) the ALJ erred in failing to provide an appropriate analysis of whether the Plaintiff meets or equals a listed impairment; (2) the ALJ ignored evidence presented by Plaintiff; and (3) the ALJ failed to properly analyze Plaintiff's allegations of pain. The Court has carefully considered each of Plaintiff's arguments and concludes that they lack merit.

A. Listing of Impairments

The Court first examines whether substantial evidence supports the ALJ's finding that Plaintiff's impairments do not meet or equal a listed impairment. Specifically, the Court addresses Plaintiff's arguments that (1) the ALJ erred by failing to properly discuss whether Plaintiff's impairments met the requirements of Listing 12.04 and (2) the ALJ erred by failing to discuss whether Plaintiff's impairments were equivalent in severity to the requirements of a listed impairment.

First, in order to meet a listing, an impairment must be accompanied by the medical findings shown in the listing. See 20 C.F.R. § 404.1525(d). Listing 12.04 requires that in order to meet it, either the requirements for both subsections A and B must be satisfied, or the requirements for subsection C must be

satisfied. Plaintiff does not even attempt to argue that she meets the requirements of subsection C, and a review of the record and the ALJ's decision reveals that no medical findings have been documented showing that Plaintiff's impairments meet the requirements of subsection C. Plaintiff appears to argue that her impairments meet the requirements of subsection A; however, the ALJ discussed in detail the requirements of subsection B and found that Plaintiff's impairments did not meet the requirements of that subsection. (Tr. 25.) The ALJ discussed those requirements in his analysis of whether Plaintiff met Listing 12.06 because the requirements of subsection B of Listing 12.06 are the same as the requirements of subsection B of Listing 12.04. The ALJ mentioned in his opinion that he had considered Plaintiff's argument that she met Listing 12.04 and had found otherwise. Although the ALJ's analysis could have been more developed and clear, the Court concludes, based on the analysis the ALJ made, that the ALJ made a sufficient analysis of the criteria in Listing 12.04 to address whether Plaintiff's impairments met the requirements of that listing. In addition, the Court concludes, from its review of the record, that the ALJ's decision that Plaintiff did not meet Listing 12.04 is supported by substantial evidence. As a result, the Court rejects Plaintiff's argument.

Plaintiff also argues that the ALJ erred by not analyzing whether Plaintiff's impairments were medically equivalent to a

listed impairment. See 20 C.F.R. § 404.1526(a). However, the ALJ found that Plaintiff's impairments did not equal the requirements of a listed impairment. (Tr. 31.) The ALJ described in detail the medical evidence in the record describing Plaintiff's symptoms during the relevant time period. (Tr. 25-27.) In addition, SSR 86-8 provides:

Where an individual has a combination of impairments, none of which meets or equals a listed impairment, and each impairment is manifested by a set of symptoms and relevant signs and/or abnormal laboratory findings, the collective medical findings of the combined impairments must be matched to the specific set of symptoms, signs, and laboratory findings of the listed impairment to which they can be most closely related. The mere accumulation of a number of impairments will not establish medical equivalency.

SSR 86-8, 1986 WL 68636, at *4. However, Plaintiff has failed to specify which listing her impairments equaled and how her impairments equaled that listing. Plaintiff has made no effort to show the Court how the cumulative effect of her impairments is medically equivalent to a listed impairment and thus how she was prejudiced by any error on the ALJ's part, and the Court concludes, based on the ALJ's analysis, that no administrative fact finder could have reasonably found that Plaintiff's impairments were equivalent to a listed impairment. See *St. Anthony v. U.S. Dep't of Health and Human Servs.*, 309 F.3d 680, 691 (10th Cir. 2002) (explaining that "the party challenging the action below bears the burden of establishing that the error

prejudiced the party"); *Allen v. Barnhart*, 357 F.3d 1140, 1145 (10th Cir. 2004) (concluding that principle of harmless error can be applied to social security cases where, based on material considered by ALJ, court can confidently say that no administrative fact finder, following the correct analysis, could have resolved the factual matter in any other way); *Wilson v. Barnhart*, 68 Fed. Appx. 169, 2003 WL 21419684 (10th Cir. 2003) (applying harmless error analysis). Plaintiff merely complains that the ALJ did not adequately consider whether her impairments equaled a listing. As a result, the Court rejects Plaintiff's argument.

B. Consideration of All the Evidence

Plaintiff also argues that the ALJ failed to consider all of the evidence. Specifically, Plaintiff argues (1) the ALJ failed to consider medical records dated before the alleged onset date of March 2000, (2) the ALJ erred by failing to properly consider the findings of two non-examining DDS physicians, and (3) the ALJ failed to even note Plaintiff's impairment of depression.

First, Plaintiff alleges that the ALJ erred by failing to consider evidence prior to the alleged onset date of March 2000. Specifically, Plaintiff points to medical records from April 1997 and September 1997. (Tr. 128, 134.) However, Plaintiff has failed to show why the ALJ was required to consider these records, which were made two to three years before the relevant time period began. The ALJ was required to evaluate Plaintiff's

ability to work during the relevant time period. Cf. *Rhodes v. Barnhart*, 2004 WL 1966211, at *3 (10th Cir. 2004). The ALJ carefully reviewed the evidence from the relevant time period, describing in that review how Plaintiff's condition varied, partially by her response to medications she took. Plaintiff has not made any attempt to argue or demonstrate how the records from 1997 were relevant to the ALJ's decisionmaking. Therefore, the Court rejects Plaintiff's argument.

Second, Plaintiff argues that the ALJ erred by failing to consider the findings of two non-examining DDS physicians. However, the ALJ noted that he had considered the opinions of the State agency medical consultants in determining Plaintiff's residual functional capacity. (Tr. 29.) Notably, the ALJ did not state that he had adopted the opinions of the DDS physicians; rather, the ALJ stated that he had considered their opinions and he noted that they had reached the same conclusion. (Tr. 29.) Plaintiff argues that this consideration of the DDS physicians' opinions required the ALJ to accept the DDS physicians' reports in full. However, Plaintiff has provided no support for this position, and the Court, in conducting its own research, has found no support for such a position. In addition, Plaintiff fails to note that both of the DDS physicians concluded Plaintiff was mentally capable of performing substantial gainful activity. (Tr. 253, 304.) As a result, the Court rejects Plaintiff's argument.

Third, Plaintiff argues that the ALJ "failed to even note" Plaintiff's depression. (File Entry #10, at 16.) This argument completely lacks merit. The ALJ made multiple references to Plaintiff's depression within the analysis of his opinion. (Tr. 24, 26, 27.) In fact, the ALJ included depression in his list of Plaintiff's allegations on the very page Plaintiff referenced in arguing that the ALJ ignored Plaintiff's depression. (Tr. 24.) As a result, the Court also rejects this argument.

C. Pain Analysis

Finally, Plaintiff argues that the ALJ erred by failing to engage in the pain analysis required by *Luna v. Bowen*, 834 F.2d 161 (10th Cir. 1987). Plaintiff argues that she suffers from pain due to her disk disease, an impairment found by the ALJ to be severe. (Tr. 24.)

Contrary to Plaintiff's argument, the Court concludes that the ALJ did engage in the analysis required by *Luna*. First, the ALJ found that Plaintiff's back disorders are severe impairments. (Tr. 24.) Thus, the ALJ found that Plaintiff had established by objective medical evidence that she had a pain-producing impairment. See *Luna* 834 F.2d at 163-64. Second, although the ALJ did not state in so many words, the ALJ found a "loose nexus" existed between Plaintiff's subjective allegations of pain and Plaintiff's impairment. See *id.* at 165. The ALJ noted, "Because symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, careful

consideration [was] given to all available information concerning claimant's pain and its functional effect on work-like activity."

(Tr. 27 (emphasis added).)¹ Third, the ALJ then considered all the evidence, both objective and subjective, and concluded that Plaintiff's pain was not disabling. See *Luna*, 834 F.2d at 165-66. The ALJ reached this conclusion because he found that Plaintiff's testimony and subjective allegations were not consistent with the objective medical and non-medical evidence.

(Tr. 27-28.) The ALJ explained that his credibility finding was based, in part, on the lack of specificity of Plaintiff's testimony, evidenced by Plaintiff's many answers of "I don't know" or "I can't remember" to his questions during the hearing.

(Tr. 27-28.) The ALJ also explained that his credibility determination was based on inconsistencies in Plaintiff's testimony regarding her ability to work and the lack of corroborative medical records over the relevant time period.

(Tr. 27-28.)

¹Plaintiff has set forth a list of objective evidence Plaintiff argues shows that the ALJ's pain analysis and conclusion is not supported by substantial evidence. The Court has considered each of the items listed by Plaintiff. However, the Court concludes that the ALJ properly considered the relevant evidence before him and that his findings are supported by substantial evidence. The Court may "neither reweigh the evidence nor substitute [its] judgment for that of the agency." *White v. Barnhart*, 287 F.3d 903, 905 (10th Cir. 2001) (citation omitted). In addition, the Court notes that at least one of the items on Plaintiff's list - that Plaintiff's side bending and rotation were 75% of normal - was noted by the ALJ in his analysis. (Tr. 26.)

Therefore, the Court rejects Plaintiff's argument and instead concludes that the ALJ properly engaged in the Luna analysis in evaluating Plaintiff's subjective allegations of pain. In addition, the ALJ set forth legitimate, particular reasons why he found Plaintiff's subjective allegations of pain not to be fully credible. See *Winfrey v. Chater*, 92 F.3d 1017, 1020 (10th Cir. 1996) (requiring that ALJ's credibility findings "'should be closely and affirmatively linked to substantial evidence'" (citation omitted)). Because the ALJ properly engaged in the *Luna* analysis and properly explained his credibility determination, the Court will not disturb those findings. See *Kepler v. Chater*, 68 F.3d 387, 391 (10th Cir. 1995) ("'Credibility determinations are peculiarly the province of the finder of fact, and [this court] will not upset such determinations when supported by substantial evidence.'" (Citation omitted.)).

CONCLUSION

Based on the above analysis, the Court concludes that the ALJ's decision is supported by substantial evidence and is not

legally erroneous. As a result, **IT IS HEREBY ORDERED** that Plaintiff's request for reversal or remand be **DENIED** and the Commissioner's decision be **AFFIRMED**.

DATED this 1ST day of February, 2005.

BY THE COURT:



Samuel Alba
United States Chief Magistrate Judge

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00177

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Glen A Cook, Esq.
COOK SKEEN & ROBINSON
5788 S 900 E
SALT LAKE CITY, UT 84121-2178
JFAX 9,8925067

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE

EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -2 A 11: 51

DISTRICT OF UTAH

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2005 FEB -1 P 4: 15

Roger J. McConkie (5513)
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
Telephone: (801) 524-1000

BY: _____
DEPUTY CLERK

U.S. DISTRICT COURT
DISTRICT OF UTAH

Attorneys for Receiver

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT G. WING, Receiver for
4NExchange, L.L.C.,

Plaintiff,

v.

JEFFREY S. YAGER,

Defendant.


ORDER APPROVING
SETTLEMENT

Case No. 1:03cv00054
Judge: Dale A. Kimball

Based upon the Stipulation and Joint Motion to Approve Settlement and good cause appearing therefore, the Court hereby approves the settlement and orders the Receiver, Robert G. Wing, to submit an order of dismissal of all claims against Jeffrey S. Yager within five (5) days of receipt of the sixty thousand dollar (\$60,000.00) payment as set forth in the Settlement Agreement.

DATED this 2d day of February, 2005.

BY THE COURT:


HONORABLE DALE A. KIMBALL
United States District Court Judge

21

MAILING CERTIFICATE

I hereby certify that on the 1st day of February 2005, I caused a true and correct copy of the foregoing **ORDER APPROVING SETTLEMENT** to be mailed, first-class postage prepaid thereon, to the following:

Thomas M. Melton
Attorney for Securities & Exchange Commission
15 West South Temple, #1800
Salt Lake City, Utah 84101

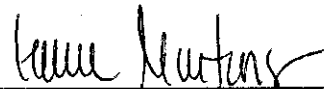
Rodney G. Snow
Clyde, Snow, Sessions & Swenson
201 South Main Street #1300
Salt Lake City, Utah 84111

Bernard J. Barrett
Jay M. Miller
Attorney for Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Jeffrey Buckner
Utah Attorney General
Commercial Enforcement Division
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872

Ronald K. Bassett
208 North 1150 East
Lindon, Utah 84042

Kenneth B. Black
Stoel Rives LLP
201 S. Main St., #1100
Salt Lake City, Utah 84111



G:\Rjm\4NExchange\Yager, Jeffrey S\order approving settlement

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cv-00054

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Kenneth B. Black, Esq.
STOEL RIVES LLP
201 S MAIN ST STE 1100
SALT LAKE CITY, UT 84111-4904
EMAIL

Roger J. McConkie, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111

United States District Court
for the District of Utah

Petition and Order for Summons for Offender Under Supervision

Name of Offender: **Alfredo Solano-Batalia**

Docket Number: **2:02-cr-00521-001-PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**
U.S. District Judge

Date of Original Sentence: **May 27, 2003**

Original Offense: **Possession of a Firearm by a Convicted Felon**

Original Sentence: **21 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **March 2, 2004**

Supervision Revoked/Reinstated: **Sept. 27, 2004**

FILED
CLERK, U.S. DISTRICT COURT
2005 JAN 31 P 1:51

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BY: _____
DEPUTY CLERK
JAN 31 2005

OFFICE OF
JUDGE PAUL G. CASSELL

PETITIONING THE COURT

☒ To issue a summons 1569 West 600 South, SLC, UT 84104

CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: On January 22, 2005, the defendant was arrested for Reckless Driving, Driving Under the Influence of Alcohol/Drugs, and Driving on a Revoked License.

Allegation No. 2: The defendant has failed to maintain full-time, verifiable employment or participate in academic or vocational development.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

by Shelley Mangum

Shelley Mangum, U.S. Probation Officer

Date: January 25, 2005

THE COURT ORDERS:

- ☒ The issuance of a summons
☐ The issuance of a warrant
☐ No action
☐ Other

Paul G. Cassell
Honorable Paul G. Cassell
United States District Judge

Date: 1/31/05

43

tsh

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00521

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Eric D. Petersen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert E. Steed, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB - 1 2005

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

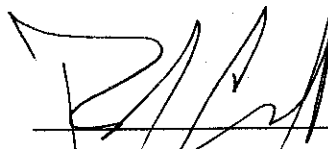
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, :
 :
Plaintiff, : 2:03-CR-313 PGC
 :
vs. : ORDER GRANTING LEAVE TO
 : DISMISS INDICTMENT
ST. GEORGE AUTO, INC., :
 :
Defendant.

Upon motion of the United States, pursuant to a plea agreement with co-defendants Christopher Madsen and Joseph Paul Evans, and good cause appearing therefore, the Court grants leave to the United States Attorney, pursuant to Rule 48(a), Federal Rules of Criminal Procedure, to file a dismissal of the Indictment in the above-titled case.

DATED this 1st day of February, 2005.

BY THE COURT:



PAUL G. CASSELL, Judge
United States District Court



tsh

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00313

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Mr. Richard D McKelvie, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

FILED RECEIVED CLERK
CLERK, U.S. DISTRICT COURT
JAN 31 2005
2005 FEB - 1 A 9:45
U.S. DISTRICT COURT
DISTRICT OF UTAH
DEPUTY CLERK

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Executive Risk Indemnity Inc.
Plaintiff

v.

Cameron J. Lewis, et al.
Defendant.

*
* CASE NO. 2:04 CV 01115 PGC
*
* Appearing on behalf of:
*
* Executive Risk Indemnity Inc.
* (Plaintiff/Defendant)
*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Jeffrey L. Silvestrini, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: Jan 27, 2005. [Signature] (Signature of Local Counsel) 2959 (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Daniel J. Standish, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) ☒ a non-resident of the State of Utah or, (ii) ☐ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Jeffrey L. Silvestrini as associate local counsel.

Date: January 26, 2005. Check here ☒ if petitioner is lead counsel.

[Signature] (Signature of Petitioner) FEE PAID

Name of Petitioner: Daniel J. Standish Office Telephone: 202-719-7000
(Area Code and Main Office Number)

Business Address: Wiley Rein & Fielding LLP
(Firm/Business Name)
1776 K Street NW Washington DC 20006
Street City State Zip

9

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
District of Columbia Court of Appeals		6/1988
Supreme Court of Colorado		Currently 11/1986 Inactive
United States Court of Appeals for the Fourth Circuit		1988
United States Court of Appeals for the District of Columbia Circuit		1989
United States Court of Appeals for the Seventh Circuit		2000
United States Court of Appeals for the Ninth Circuit		4/28/04
United States District Court for the District of Maryland		1989

SEE ATTACHMENT

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
Lumbermens Mutual Casualty Co. v. Clearone Comm., et al.	04-CV-119	February, 2004

(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 3/4 day of January, 2005.


U.S. District Judge

BAR ADMISSION HISTORY (Continued)

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
United States District Court for the District of Columbia		1988
United States District Court for the Southern District of Indiana		12/2001
United States District Court for the Northern District of Illinois		4/4/01
United States District Court for the Eastern District of Wisconsin		1/15/03
United States District Court for the District of Colorado		5/11/04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2005, a copy of the foregoing was sent by first class mail, postage prepaid, to:

William Michael, Jr.
LINDQUIST & VENNUM, PLLP
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274

Grant M. Sumsion
Jason S. Crandall
Matthew B. Anderson
3651 North 100 East, Suite 300
Provo, UT 84684
Counsel for NSFF

Neil A. Kaplan
CLYDE SNOW SESSIONS & SWENSON
One Utah Center, 13th Flr.
201 South Main Street
Salt Lake City, UT 84111-2216
Counsel for Cameron Lewis

Loren E. Weiss
VAN COTT BAGLEY CORNWELL &
McCARTHY
50 S. Main St., Suite 1600
Salt Lake City, UT 84144
Counsel for Tyron Lewis

Francis X. Hermann
Douglas A. Kelley, PA
Centre Villate Offices
431 S. Seventh St., Suite 2530
Minneapolis, MN 55415
Counsel for Marion Markle

Philip A. Cole
LOMMEN NELSON LAW FIRM
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Counsel for Bruce Olson

William A. Cohan
WILLIAM A. COHAN, P.C.
8910 University Center Lane, Suite 550
San Diego, CA 92122
Counsel for Martin Arnoldini

James C. Bradshaw
BROWN, BRADSHAW & MOFFAT, LLP
10 West Broadway, Suite 210
Salt Lake City, UT 84101
Counsel for Shanna Black

Calvin Harper
652 South 300 West
Orem, UT 84058

R. Kimball Mosier, Trustee
111 East Broadway, 11th Flr.
Salt Lake City, UT 84111
Trustee

Frederick M. Morgan, Jr.
HELMER, MARTINS & MORGAN CO.,
LPA
1900 Fourth & Walnut Centre
105 East Fourth Street
Cincinnati, OH 45202
Counsel for Lou Andrus

Ed Pinegar
475 West 40 North
Orem, UT 84057

R. Kimball Mosier
George B. Hofmann
PARSONS KINGHORN HARRIS
111 East Broadway, 11th Flr.
Salt Lake City, Utah 84111
Attorneys for R. Kimball Mosier, Trustee

Cy Castle
United States Trustee's Office
9 Exchange Place, # 100
Salt Lake City, Utah 84101
Assistant US Trustee

Mary E. Borja
WILEY REIN & FIELDING, LLP
1776 K Street NW
Washington, DC 20006

Peter W. Billings
FABIAN & CLENDENIN
215 S. State St., 12th Flr.
Salt Lake City, UT 84111

Mona L. Burton
HOLLAND & HART, LLP
60 E. South Temple, # 2000
Salt Lake City, UT 84111



FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

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JAN 21 2005

JAN 31 2005

MARKUS B. ZIMMER, CLERK U.S. DISTRICT COURT
BY

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Executive Risk Indemnity Inc.
Plaintiff

v.

Cameron J. Lewis, et al.
Defendant.

*
* CASE NO. 2:04 CV 01115 PGC
*
* Appearing on behalf of:
*
* Executive Risk Indemnity Inc.
* (Plaintiff/Defendant)
*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Jeffrey L. Silvestrini, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: Jan. 27, 2005. Jeffrey L. Silvestrini (2959)
(Signature of Local Counsel) (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Mary E. Borja, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) ☒ a non-resident of the State of Utah or, (ii) ☐ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Jeffrey L. Silvestrini as associate local counsel.

Date: Jan. 26, 2005. Check here ☐ if petitioner is lead counsel.

Mary E. Borja FEE PAID
(Signature of Petitioner)

Name of Petitioner: Mary E. Borja Office Telephone: 202-719-7000
(Area Code and Main Office Number)

Business Address: Wiley Rein & Fielding LLP
(Firm/Business Name)
1776 K Street NW Washington DC 20006
Street City State Zip

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
District of Columbia Court of Appeals		7/11/94
United States Court of Appeals for the District of Columbia Circuit		1/9/95
United States Court of Appeals for the Fourth Circuit		1/2/97
United States Court of Appeals for the Tenth Circuit		2/19/97
United States Court of Appeals for the Eleventh Circuit		2/97
United States District Court for Eastern District of Wisconsin		2/25/04

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
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(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 31st day of January, 2005.

Paul C. Cuff
U.S. District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2005, a copy of the foregoing was sent by first class mail, postage prepaid, to:

William Michael, Jr.
LINDQUIST & VENNUM, PLLP
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274

Grant M. Sumsion
Jason S. Crandall
Matthew B. Anderson
3651 North 100 East, Suite 300
Provo, UT 84684
Counsel for NSFF

Neil A. Kaplan
CLYDE SNOW SESSIONS & SWENSON
One Utah Center, 13th Flr.
201 South Main Street
Salt Lake City, UT 84111-2216
Counsel for Cameron Lewis

Loren E. Weiss
VAN COTT BAGLEY CORNWELL &
McCARTHY
50 S. Main St., Suite 1600
Salt Lake City, UT 84144
Counsel for Tyron Lewis

Francis X. Hermann
Douglas A. Kelley, PA
Centre Villate Offices
431 S. Seventh St., Suite 2530
Minneapolis, MN 55415
Counsel for Marion Markle

Philip A. Cole
LOMMEN NELSON LAW FIRM
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Counsel for Bruce Olson

William A. Cohan
WILLIAM A. COHAN, P.C.
8910 University Center Lane, Suite 550
San Diego, CA 92122
Counsel for Martin Arnoldini

James C. Bradshaw
BROWN, BRADSHAW & MOFFAT, LLP
10 West Broadway, Suite 210
Salt Lake City, UT 84101
Counsel for Shanna Black

Calvin Harper
652 South 300 West
Orem, UT 84058

R. Kimball Mosier, Trustee
111 East Broadway, 11th Flr.
Salt Lake City, UT 84111
Trustee

Frederick M. Morgan, Jr.
HELMER, MARTINS & MORGAN CO.,
LPA
1900 Fourth & Walnut Centre
105 East Fourth Street
Cincinnati, OH 45202
Counsel for Lou Andrus

Ed Pinegar
475 West 40 North
Orem, UT 84057

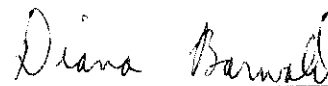
R. Kimball Mosier
George B. Hofmann
PARSONS KINGHORN HARRIS
111 East Broadway, 11th Flr.
Salt Lake City, Utah 84111
Attorneys for R. Kimball Mosier, Trustee

Cy Castle
United States Trustee's Office
9 Exchange Place, # 100
Salt Lake City, Utah 84101
Assistant US Trustee

Mary E. Borja
WILEY REIN & FIELDING, LLP
1776 K Street NW
Washington, DC 20006

Peter W. Billings
FABIAN & CLENDENIN
215 S. State St., 12th Flr.
Salt Lake City, UT 84111

Mona L. Burton
HOLLAND & HART, LLP
60 E. South Temple, # 2000
Salt Lake City, UT 84111



United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01115

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Gary L Johnson, Esq.
RICHARDS BRANDT MILLER & NELSON
50 S MAIN ST STE 700
PO BOX 2465
SALT LAKE CITY, UT 84110
EMAIL

Jeffrey L. Silvestrini, Esq.
COHNE RAPPAPORT & SEGAL
PO BOX 11008
SALT LAKE CITY, UT 84147-0008
EMAIL

Daniel J. Standish, Esq.
WILEY REIN & FIELDING
1776 K ST NW
WASHINGTON, DC 20006

Mr. James C. Bradshaw, Esq.
BROWN BRADSHAW & MOFFIT
10 W BROADWAY STE 210
SALT LAKE CITY, UT 84101
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED

CLERK, U.S. DISTRICT COURT

February 1, 2005 (10:09am)

DISTRICT OF UTAH

UNITED CAPITAL, A Division of Hudson
United Bank

Plaintiff,

vs.

VIDEO-MATIC U.S.A., INC., d/b/a THE
VIDEO-MATIC GROUP, INC., et al.

Defendants.

AMENDED JUDGMENT

Case No. 2:04-CV-00140 PGC

The above matter having come before the Court upon plaintiff's Motion for Entry of Default Judgment Against Video-Matic U.S.A., Inc., the entry of default having been previously taken, and upon the affidavits and facts set forth in support of said motion, and pursuant to Federal Rule of Civil Procedure, Rule 55(b), the court finds good cause for entry of default judgment against defendant Video-Matic U.S.A., Inc..

IT IS ORDERED, ADJUDGED and DECREED that plaintiff United Capital, a division of Hudson United Bank recover of defendant Video-Matic U.S.A., Inc., the sum of \$167,608.80 as of September 15, 2004, which amount may be augmented to include additional interest, late fees, and attorneys fees and costs incurred in collecting said judgment.

Entered on docket

2-2-05 by:

BAT
Deputy Clerk

30

The court will not order immediate repossession of collateral. Plaintiff may seek an order preventing defendant from selling or otherwise disposing of the collateral or may proceed with repossession under state law procedures.

DATED this 14 day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. G. Cassell', is written over a horizontal line.

Paul G. Cassell
United States District Judge

tsh

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00140

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Shawn T. Welch, Esq.
PRUITT GUSHEE
1800 BENEFICIAL LIFE TOWER
36 S STATE ST
SALT LAKE CITY, UT 84111-1495
EMAIL

Video-Matic U.S.A.
C/O KEN RASMUSSEN, REG AGT
3950 SOUTH 2200 WEST
WEST VALLEY CITY, UT 84119

Dustan Chad McCoy, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

James Logan Ahlstrom, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -1 P 4:25

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

BY: _____
DEPUTY CLERK

LUIZA BEDEGER,

Plaintiff,

vs.

WESTBEND COMPANY and WAL-MART
STORES, INC.,

Defendants.

ORDER DENYING PLAINTIFF'S
MOTION TO AMEND AND
ALTERNATIVE MOTION TO ESTOP
APPORTIONMENT OF FAULT TO
NON-PARTIES

Case No. 1:03-CV-00036 PGC

This matter is before the court on plaintiff's motion to amend its complaint, or in the alternative, either declare that comparative fault has no application to this case or declare that Westbend is deemed to have waived the affirmative defense of comparative fault (#48-3). Neither party disputes that the scheduling order agreed upon by the parties required that all amendments to pleadings, including amendments to join parties, be filed by January 30, 2004 — more than one year ago. In light of the untimeliness of plaintiff's motion to amend, and because allowing the motion to amend would undoubtedly force the court to continue the trial currently scheduled to begin on March 28, 2005, plaintiff's motion is DENIED. No good cause for

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amending the pleadings this late date has been shown.

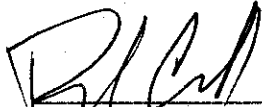
The court further finds that defendants have not waived their right assert the affirmative defense of comparative fault — it was properly raised in their respective answers and the supplemental notice filed on November 30, 2004.

Lastly, the court makes no decision regarding plaintiff's assertion that comparative fault has no application to this case, but instead takes the issue under advisement and intends to discuss it further with both parties during the final pre-trial conference.

SO ORDERED.

DATED this 1st day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cv-00036

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mitchel T. Rice, Esq.
MORGAN MINNOCK RICE & JAMES
136 S MAIN STE 800
SALT LAKE CITY, UT 84101
JFAX 9,5319732

Mr. Peter W. Billings Jr, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Joan M. Andrews, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Scott R. Ast, Esq.
WARDEN TRIPLETT GRIER
9401 INDIAN CREEK PKWY STE 1100
OVERLAND PARK, KS 66210
EMAIL

Trent J. Waddoups, Esq.
CARR & WADDOUPS
JUDGE BLDG STE 609
8 E BROADWAY
SALT LAKE CITY, UT 84111
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH	
CENTRAL DIVISION	FILED
	CLERK, U.S. DISTRICT COURT
	February 2, 2005 (3:55pm)
	DISTRICT OF UTAH
UNITED STATES OF AMERICA,	
Plaintiff,	
	MEMORANDUM OPINION AND ORDER REAFFIRMING DECISION TO GIVE GREAT WEIGHT TO THE SENTENCING GUIDELINES IN DETERMINING APPROPRIATE SENTENCES
vs.	
JAMES JOSEPH WILSON,	Case No. 2:03-CR-00882 PGC
Defendant.	

Nearly three weeks ago, defendant James Wilson came before the court for sentencing on an armed robbery. Because the sentencing occurred one day after the Supreme Court's decision in *Booker v. United States*,¹ the court was required to consider the Federal Sentencing Guidelines in their "advisory" capacity. The court issued a memorandum decision explaining that it would give strong consideration to the Guidelines sentence, although varying from the Guidelines only "in unusual cases for clearly identified and persuasive reasons."² With respect to defendant Wilson, the court determined that the Guidelines called for a prison sentence of not less than 188 months.

¹ 125 S.Ct. 738 (2005).

² *Wilson*, 2005 WL 78552, *1 (D. Utah Jan. 13, 2005).

Finding no good reason to vary from the Guidelines, the court imposed that sentence and gave both sides ten days to file any objections.

Since the court's initial decision in this case, several other district courts around the country have offered their analysis of the weight to be given to the Guidelines in the wake of *Booker*. Notably, *United States v. Ranum*³ rejects this court's approach, concluding that heavy weight should not be given to the Guidelines because they "either reject or ignore" many of the factors that are pertinent to determining an appropriate sentence.⁴ *Ranum*'s approach has been adopted by several other district courts.⁵ Not surprisingly, defendant Wilson has now filed a motion to reconsider, asking this court to follow *Ranum* and give him a sentence lower than the Guidelines.

It is troubling to find disagreement on the basic approach to calculating federal prison sentences, particularly where Congress has commanded courts to avoid "unwarranted sentencing disparity."⁶ But after reflection, the court respectfully believes that *Ranum* and other cases like it are incorrectly decided—at least as to their methodology. After careful consideration, the court therefore denies Wilson's motion.

This court remains convinced that it should give great weight to the Sentencing Guidelines in determining the appropriate sentence, varying from the Guidelines only in rare cases. The

³ 2005 WL 161223 (E.D.Wis. Jan. 19, 2005).

⁴ *Id.* at *1.

⁵ *United States v. Myers*, 2005 WL 165314 (S.D. Iowa Jan. 26, 2005); *United States v. West*, 2005 WL 180930 (S.D.N.Y. Jan. 27, 2005); *see also United States v. Huerta-Rodriguez*, No. 8:04CR365 (D. Neb. Feb. 1, 2005), *available at* http://sentencing.typepad.com/sentencing_law_and_policy/files/judge_bataillon_huerta_ruling.pdf (last visited Feb. 2, 2005).

⁶ 18 U.S.C. § 3553(a)(6).

Guidelines system fully reflect congressional purposes of punishment. The factors the Guidelines considers, and the weight to be given to those factors, have generally been approved by Congress. Moreover, heavy reliance on the Guidelines is the only way to avoid unwarranted sentencing disparity. The court accordingly rejects defendant Wilson’s motion.

I. THE COMPETING POST-*BOOKER* APPROACHES TO DETERMINING SENTENCES

A. United States v. Wilson

In its first decision in this case, this court examined the structure of the Sentencing Reform Act in the wake of the Supreme Court’s decision in *Booker v. United States*.⁷ *Booker* held that the Federal Sentencing Guidelines were unconstitutional because they relied on judicial factfinding, rather than the jury factfinding required by the Sixth Amendment’s jury trial right. *Booker* further held that the remedy for this constitutional defect was to sever the provisions in the Sentencing Reform Act that rendered the Guidelines mandatory, thus leaving in place “advisory” Guidelines.⁸

In its earlier decision, this court concluded that the recommended Guidelines sentence should receive considerable weight. Guidelines sentences typically achieve congressional objectives. They appear to track the public’s view as to just punishment and are well-designed to incapacitate serious offenders and deter would-be criminals. Finally, the Guidelines are the only available common standard for judges to use in crafting sentences. Heavy reliance on the Guidelines is thus the only

⁷ 125 S.Ct. 738 (2005).

⁸ This court has also held that the Guidelines are advisory in the “safety valve” context. *See United States v. Duran*, __ F.Supp.2d ___, 2005 WL ___, 2:04-CR-396-PGC (D. Utah Jan. 31, 2005).

way to implement the congressional directive for courts to “avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct”⁹

Accordingly, in its earlier opinion, this court set out the approach it would follow in all sentencings. First, the court will calculate the advisory guideline sentence. This calculation will reflect the Guidelines offense level and criminal history category, adjusted by any departures that the Guidelines suggest. In other words, the advisory sentence requires determining whether an offense falls inside or outside the “heartland” of the Guidelines. If outside, the court will determine the appropriate extent of a departure under the Guidelines system as part of determining the recommended Guidelines sentence.

Having thus determined the advisory Guidelines sentence, the court would then determine whether it should *vary* that sentence to reflect any unique circumstances of the particular case. (Terminology can get a bit tricky here; to avoid confusion, it seems best to use the term “departure” as reflecting its settled meaning of a difference from an otherwise-specified Guidelines sentence approved by the Guidelines themselves,¹⁰ and a new term – perhaps “variance” – as meaning a difference from the Guidelines system that is not called for by the Guidelines themselves. The Second Circuit has suggested the term “non-Guidelines sentence” might serve as the distinguishing term from “departure.”¹¹ However, that still leaves a void in that no verb is available to describe a court’s action in such circumstances – “variance” has the advantage of including the verb form

⁹ 18 U.S.C. § 3553(a)(6).

¹⁰ *See* U.S.S.G., Chapter 5, Part K (“Departures”).

¹¹ *United States v. Crosby*, ___ F.3d ___, No. 03-1675 at 19 n.9 (2nd Cir. February 2, 2005).

“vary.”) Variances would be rare – the court suggested its sentences would vary from the Guidelines only “in unusual cases for clearly identified and persuasive reasons.”¹²

Applying this approach to the case at hand, the court determined that the advisory Guidelines sentence for defendant Wilson’s armed bank robbery was at least 188 months in prison. The court arrived at this sentence by looking at the “real offense” committed by Wilson – that is, by looking beyond the mere offense of conviction (armed bank robbery) to what actually happened. Thus, the court increased the Guidelines base offense level for robbery because the defendant took the property of a financial institution, brandished a sawed-off shotgun at several tellers, and left the bank with more than \$10,000.¹³ After an adjustment for acceptance of responsibility and for the defendant’s history as an armed career criminal, and application of a criminal history category of VI, the resulting Guidelines range of 31 called for a sentence of no less than 188 months.

The court also concluded that *Booker* required the real offense be determined through judicial factfinding under a preponderance of the evidence standard. Because this conclusion has since been disputed by several courts,¹⁴ it is appropriate to briefly explicate this point. *Booker*’s “remedial majority” (that is, the majority opinion authored by Justice Breyer) carefully considered whether to engraft onto the Guidelines the constitutional requirements of the Sixth Amendment – jury

¹² *Wilson*, 2005 WL 78552, *1.

¹³ See P.S.R. at 6 (base offense level of 20 from § 2B3.1, increased by 2 levels under § 2B3.1(b)(1) (property of financial institution), increased by 5 levels under § 2B3.1(b)(2)(A) (brandishing of firearm), increased by 1 level under § 2B3.1(b)(7)(B) (loss of more than \$10,000).

¹⁴ See, e.g., *Huerta-Rodriguez*, No. 8:04CR365 (D.Neb. Feb. 1, 2005); see also *United States v. Blarkley*, Case No. 04-CR-119 (N.D.Okla. Jan. 24, 2005).

determinations and proof beyond a reasonable doubt. The remedial majority flatly rejected any such remedy, concluding it “would destroy the system”:

To engraft the Court’s constitutional requirement onto the sentencing statutes . . . would prevent a judge from relying upon a presentence report for factual information, relevant to sentencing, uncovered after the trial. In doing so, it would, even compared to pre-Guidelines sentencing, weaken the tie between a sentence and an offender’s real conduct. It would thereby undermine the sentencing statute’s basic aim of ensuring similar sentences for those who have committed similar crimes in similar ways.¹⁵

To avoid destroying “the system,” the remedial majority severed only the two provisions in the Sentencing Reform Act that rendered the Guidelines mandatory,¹⁶ concluding that with these provisions gone “the remainder of the Act satisfies the Court’s constitutional requirements.”¹⁷ Of course, this court is obligated to follow the holding of the “remedial majority” in *Booker* and give effect to its conclusion that “the remainder of the Act” remains in place. Therefore, the court must determine the advisory Guidelines range in the way that it always has, through judicial fact-finding under a preponderance of the evidence standard. (Just today, the Second Circuit reached the same conclusion.¹⁸)

Having determined Wilson’s advisory Guidelines sentence in the traditional manner, the court then exercised its discretion and considered whether there was some good reason for varying from the Guidelines. Finding no sound reason for a variance from that sentence, the court imposed

¹⁵ *Booker*, 125 S.Ct. at 760.

¹⁶ *Id.* at 765 (invalidating 18 U.S.C. § 3553(b)(1) and § 33742(e)).

¹⁷ *Id.*

¹⁸ *United States v. Crosby*, __ F.3d __, No. 03-1675 at 28 (2nd Cir. February 2, 2005).

the recommended sentence of 188 months. The court also held the judgment open for ten days to allow either side to object to any of the court's conclusions.

B. *United States v. Ranum*

Defendant Wilson has now filed an objection to the court's earlier conclusion. Wilson urges that, instead of giving heavy weight to the Guidelines, the court should follow the more flexible approach to sentencing explicated by Judge Adelman of the Eastern District of Wisconsin in *United States v. Ranum*.¹⁹ *Ranum* began – as this court did in *Wilson* – by reciting the congressionally-mandates purposes of criminal sentences laid out in 18 U.S.C. § 3553(a)(2):

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner²⁰

Ranum went on to reject this court's analysis in *Wilson*, concluding that:

The directives of *Booker* and § 3553(a) make clear that courts may no longer uncritically apply the guidelines and, as one court suggested, 'only depart . . . in unusual cases for clearly identified and persuasive reasons.' The approach espoused in *Wilson* is inconsistent with the holding[] of . . . *Booker*, directing courts to consider all of the § 3553(a) factors, many of which the guidelines either reject or ignore.²¹

Ranum went on to list various factors which were, in its view, relevant to sentencing but excluded from consideration by the Guidelines – e.g., a defendant's socioeconomic status, his family ties and

¹⁹ See Defendant's Memo. on Application of *U.S. v. Booker* at 13 (citing, *Ranum*, 2005 WL 78552 (E.D. Wisc. Jan. 19, 2005)).

²⁰ 18 U.S.C. § 3553(a)(2).

²¹ *Ranum*, 2005 WL 161223, at *1.

responsibilities, his lack of guidance as a youth, and so forth.²² *Ranum* held these exclusions “cannot be squared” with the congressional directive that courts must consider “the history and characteristics of the defendant” in determining an appropriate sentence.²³

Ranum also noted that one of the purposes of sentencing – providing the defendant with appropriate education, training, treatment or medical care – might conflict with a Guidelines-mandated prison sentence.

Ranum also spelled out a different procedural approach to calculate the advisory Guidelines sentence. *Ranum* saw no need for courts to

[F]ollow the old “departure” methodology. The guidelines are not binding, and courts need not justify a sentence outside of them by citing factors that take the case outside the ‘heartland.’ Rather, courts are free to disagree, in individual cases and in the exercise of discretion, with the actual range proposed by the guidelines, so long as . . . the ultimate sentence is reasonably and carefully supported by reasons tied to the § 3553(a) factors.²⁴

Applying this approach to calculate defendant *Ranum*’s sentence, the court imposed a sentence of a year and a day for bank fraud – well below the recommended minimum Guidelines sentence of 37-46 months. The rationale for this lower sentence included the defendant’s motivation for the fraud (he was attempting to keep his business afloat) as well as the significant “collateral consequences” of a criminal conviction (he lost his job in the banking industry).

Judge Adelman’s analysis in *Ranum* has proven influential. Shortly after *Ranum* was decided, Judge Pratt of the Southern District of Iowa noted the disagreement between *Wilson* and

²² *Id* at 1, 2. (citing, *inter alia*, U.S.S.G. §§ 5H1.6, 5H1.5, 5H1.12) (policy statement).

²³ 18 U.S.C. § 3553(a)(1).

²⁴ *Ranum*, 2005 WL 161223, *2.

Ranum, electing to side with *Ranum*. In *United States v. Myers*,²⁵ Judge Pratt concluded that “the Guideline provisions and the statutory provisions under section 3553(a) often contradict one other.”²⁶ *Myers* cited the same factors mentioned in *Ranum* – a defendant’s socioeconomic status, his family ties and responsibilities, his lack of guidance as a youth, and so forth – as factors unfairly excluded from consideration by the Guidelines. Based on the *Ranum* methodology, defendant Myers received a sentence of probation for illegal possession of a firearm – a sentence well below the Guidelines range (20 to 30 months in prison). Similarly, in *United States v. West*,²⁷ Judge Sweet of the Southern District of New York noted the competing approaches of *Wilson* and *Ranum*. He also elected to follow the more flexible approach of *Ranum*, concluding that § 3553(a) requires courts “to consider a host of individual variables and characteristics excluded from those calculations called for by the Guidelines.”²⁸ Finally, Judge Bataillon of the District of Nebraska tracked *Ranum*’s approach in *United States v. Jose Huerta-Rodriguez*. He rejected the government’s position (which tracked *Wilson*) that “a criminal sentence should fall within the Guidelines range, absent highly unusual circumstances.”²⁹ Instead, he determined he would make a more individualized assessment of the appropriate penalty “with the knowledge that the Guidelines do not necessarily represent a reliable indication of reasonableness in every case”³⁰

²⁵ 2005 WL 165314 (S.D. Iowa Jan. 26, 2005).

²⁶ *Id.* at *2.

²⁷ 2005 WL 180930 (S.D.N.Y. Jan. 27, 2005).

²⁸ *Id.* at *2.

²⁹ *Huerta-Rodriguez*, No. 8:04CR365, slip op. at 6.

³⁰ *Id.* at 8.

II. THE COMPELLING REASONS FOR GIVING GREAT WEIGHT TO THE GUIDELINES

In light of defendant Wilson's motion to reconsider, this court has carefully considered whether to revise its earlier approach and follow the course charted by *Ranum* and several other courts. The court is troubled that Wilson has received different treatment of his claims than he would in other courts. After careful review of the issues, however, the court remains convinced that its earlier decision was correct. Defendant Wilson's motion to reconsider in light of *Ranum* is therefore denied.

Ranum's more flexible approach is flawed. First, it significantly alters without clear justification the Guidelines approach of giving limited effect to offender characteristics. This court cannot agree with *Ranum*, for example, that an offender's socioeconomic status is a relevant factor in determining a sentence. Moreover, the Commission has carefully calibrated the extent to which offender characteristics determine a sentence. Unlike the Guidelines, *Ranum* offers no real basis for deciding which offender characteristics to consider and how much consideration to give them.

Second, *Ranum* gives undue emphasis to the prospect that an offender might become rehabilitated while in prison. In enacting the Sentencing Reform Act, Congress specifically gave rehabilitation a secondary role in determining prison sentences. The Guidelines properly implement this congressional determination.

Third, *Ranum* pays little attention to the requirement that courts avoid unwarranted sentencing disparity. Only close adherence to the Guidelines offers any prospect of treating similarly-situated offenders equally.

A. The Guidelines Handle Specific Offender Characteristics Appropriately.

The central disagreement between *Wilson* and *Ranum* is the weight to be given to various offender characteristics. *Ranum* holds that the Guidelines “cannot be squared” with the congressional directive that courts must consider “the history and characteristics of the defendant” in determining an appropriate sentence.³¹ *Ranum* argues that Guidelines unfairly block consideration of relevant offender characteristics:

[U]nder the guidelines, courts are *generally forbidden* to consider the defendant's age, U.S.S.G. §5H1.1, his education and vocational skills, § 5H1.2, his mental and emotional condition, § 5H1.3, his physical condition including drug or alcohol dependence, § 5H1.4, his employment record, § 5H1.5, his family ties and responsibilities, § 5H1.6, his socio-economic status, § 5H1.10, his civic and military contributions, § 5H1.11, and his lack of guidance as a youth, § 5H1.12. The guidelines' prohibition of considering these factors cannot be squared with the § 3553(a)(1) requirement that the court evaluate the "history and characteristics" of the defendant. The only aspect of a defendant's history that the guidelines permit courts to consider is criminal history.³²

This part of *Ranum* has been specifically endorsed by *Myers*³³ and *West*.³⁴ Defendant Wilson urges this court to follow the approach of these other courts.

At the outset, there is reason to be skeptical of the assertion that the Guidelines are inconsistent with the congressionally-created purposes of sentencing. The Guidelines are a carefully-calibrated system put in place by Congress.³⁵ In 1984, after nine years of bipartisan deliberation and compromise, Congress passed the Sentencing Reform Act to create a guidelines system. The Act

³¹ 18 U.S.C. § 3553(a)(1).

³² *Ranum*, 2005 WL 161223, at *1 (emphasis added).

³³ 2005 WL 165314 (S.D. Iowa Jan. 26, 2005).

³⁴ 2005 WL 180930 (S.D.N.Y. Jan. 27, 2005).

³⁵ *See generally* U.S. SENTENCING COMM’N 15 YEAR REPORT at iv-xix.

created an expert agency – the Sentencing Commission – to determine ranges of appropriate sentences. In developing the Guidelines, the Commission developed sentencing ranges based on past practice as reflected in 10,000 presentence reports and additional data on over 100,000 federal sentences imposed in the immediate preguidelines era. The Commission then adjusted sentencing ranges for compelling reasons, including directions from Congress. In the seventeen years since the promulgation of the Guidelines, the Commission has continued to closely monitor the Guidelines, making adjustments where appropriate. Congress, too, has been heavily involved in this calibration, reviewing all of the amendments to the Guidelines and making amendments itself where appropriate.³⁶ As Senators Hatch, Kennedy, and Feinstein explained in their *amicus* brief in *Booker*, “Since 1984, Congress has continued to monitor this area of law and has made revisions to the sentencing guidelines system through amendments to the 1984 Act and other legislation.”³⁷

In light of this history, it would be remarkable to discover (as *Ranum* claims) that significant parts of the Guidelines “cannot be squared” with the congressionally-created purposes of sentencing.³⁸ Instead, the more logic conclusion is that the Guidelines — including its handling of offender characteristics – generally reflect congressional purposes.

1. Offender Characteristics Can Be Considered Within the Guidelines.

Relying on *Ranum*, defendant Wilson contends that the Guidelines “forbid” consideration of offender characteristics. This contention is wrong. With only a few well-justified exceptions

³⁶ See *Wilson*, 2005 WL 78552, at 5 (collecting examples of amendments made to the Guidelines).

³⁷ *Brief of Amici Curiae, United States v. Booker* at 2, 4.

³⁸ *Ranum*, 2005 WL 161223, at *1.

(such as the racial characteristics of a defendant, discussed below), the Guidelines policy statements specifically allow use of such characteristics.³⁹ In the introductory commentary to the Guidelines offender characteristics section, the Commission explains that certain circumstances are “not *ordinarily* relevant” to the determination of whether to impose a sentence “*outside* the applicable Guideline range.”⁴⁰ However, the Commission continues: “Unless expressly stated, this does not mean that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence *within* the applicable guideline range or to the determination of various other incidents of an appropriate sentence”⁴¹ Moreover, the Commission goes on to explain that there may be “exceptional cases” in which an offender characteristic, either alone or in combination with other unusual circumstances of a case, would be grounds for a departure from the Guidelines.⁴² Thus, the Guidelines limit the weight to be given to most offender characteristics, not forbid that they be given any weight.⁴³ There are, however, several forbidden characteristics.

2. The Forbidden Characteristics Should Be Forbidden.

The Guidelines forbid courts to consider an offender’s race, sex, national origin, creed, religion, and socioeconomic status.⁴⁴ These prohibitions come directly from Congress. In the

³⁹ See U.S.S.G., Part H (policy statements); see also *United States v. Williams*, 503 U.S. 193 (1992) (policy statements are an “authoritative guide” to the meaning of the Guidelines).

⁴⁰ U.S.S.G., Part H, Introductory Commentary (policy statement) (emphases added).

⁴¹ *Id.* (policy statement).

⁴² *Id.* (policy statement).

⁴³ See U.S. SENTENCING COMM’N, REPORT TO CONGRESS: DOWNWARD DEPARTURES FROM THE FEDERAL SENTENCING GUIDELINES at A-30 (2003)

⁴⁴ U.S.S.G. § 5H1.10 (policy statement).

Sentencing Reform Act, Congress mandated “[t]he Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.”⁴⁵ The reason for this clear direction is set out in the relevant legislative history. The Senate Judiciary Committee explained: “The Committee [sought] to make it *absolutely clear* that it was not . . . suggest[ing] in any way that the Committee believed that it might be appropriate, for example, to afford preferential treatment to defendants of a particular race or religion or level of affluence”⁴⁶ The House Judiciary Committee agreed: “If guidelines are to reduce inappropriate disparity, they must not be based on factors that reflect gender, race, religion or socioeconomic status.”⁴⁷ Thus, as Congressman Feeney later explained: “The concept [behind the 1984 reforms] was clear: Justice should be the same for all, regardless of one’s race, gender, status, or socioeconomic background.”⁴⁸

The congressional command is fully justified. It is doubtful whether anyone would argue for giving longer prison terms to defendants based merely on their race, sex, national origin, or creed. Interestingly, *Ranum* does not mention these characteristics, much less argue they are something that the Guidelines have unfairly removed from consideration.

Ranum does specifically attack the Guidelines prohibition of considering socioeconomic status when imposing sentence. *Ranum* concludes that this is a relevant sentencing factor and goes

⁴⁵ 28 U.S.C. § 994(e).

⁴⁶ S. Rep. 98-222, 98th Cong., 1st Sess 168 (1983) (emphasis added).

⁴⁷ H. Rep. 98-1017, 98th Cong., 2d Sess 105 (1984).

⁴⁸ Hon. Tom Feeney, *Reaffirming the 1984 Sentencing Reforms*, 27 HAMLINE L. REV. 383 (Summer 2004).

on to impose a substantially lower sentence due, in part, to defendant Ranum's successful position as a bank executive. But Congress had compelling reasons for condemning precisely this kind of analysis. The public must be confident that in something as fundamental as criminal punishment, rich and poor alike are treated fairly. As the Supreme Court explained in guaranteeing counsel for indigent offenders on appeal, it is fundamentally unfair to create a system "where the rich man can require the court to listen to argument of counsel before deciding on the merits, but a poor man cannot."⁴⁹

To be sure, legal academics have made theoretical arguments for considering socioeconomic status when determining a sentence – although they have reached conflicting conclusions about whether this high status or low status should result in lower prison sentences. For example, well-known law and economics scholar John R. Lott has argued that high status offenders suffer greater "reputational penalties" for a conviction and therefore should receive less prison time.⁵⁰ On the other side, leftist scholars have argued that those of lower socioeconomic status deserve lighter sentences, reasoning that when society has failed to provide for adequate education, health care, and housing, an offender has no debt to society to pay.⁵¹ Defendant Wilson seems to advance a variant of this argument in his brief.⁵² But these views are the extremes. The mainstream view is represented by

⁴⁹ *Douglas v. California*, 372 U.S. 353 (1963).

⁵⁰ John R. Lott, *Optimal Penalties Versus Minimizing the Level of Crime: Does it Matter Who is Correct?*, 71 B.U. L. REV. 439, 442 (1991); see also Jonathan M. Karpoff & John R. Lott, *Why the Commission's Corporate Guidelines May Create Disparity*, 3 FED. SENT. RPTR. 140 (Nov. 1990).

⁵¹ See, e.g., Jeffrie Murphy, *Marxism and Retribution*, in PUNISHMENT: A PHILOSOPHY AND PUB. AFFAIRS READER 23-38 (A. John Simmons et al. eds. 1995).

⁵² Defendant's Sentencing Memo. Regarding the Application of *U.S. v. Booker* at 12.

Congress' direction to treat rich and poor equally. There is no good reason to second-guess that judgment.

An additional reason for caution in considering socioeconomic in sentencing decisions is the potential for racial disparities. Socioeconomic status is clearly correlated with race. For example, in a recent survey, the U.S. Census Bureau reported that the poverty rate in 2003 for white households was 8.2 percent and 24.3 percent for African-American households.⁵³ This is not the occasion for sorting out the contributing reasons for these racial disparities. But in light of this clear racial component, injecting socioeconomic status into sentencing decisions will effectively create racial differences.

Comparing Wilson's case with *Ranum* will conveniently illustrate the potential unfairness. Defendant Wilson is an African-American with low socioeconomic status. According to the pre-sentence report, he apparently grew up in a single-parent household with limited means. He has had limited luck obtaining employment and has no financial assets. On the other hand, defendant Ranum is a white defendant with a high socioeconomic status. He received a sentence lower than the Guidelines due in part to the "significant collateral effects" of the prison conviction, including specifically the fact that he lost a good job at a bank and would be unable to work in banking again.⁵⁴

To be sure, Wilson deserves a longer sentence than Ranum because he committed a more serious crime (bank robbery versus bank fraud). But the issue we are now considering is whether, in determining the ultimate sentence, Ranum should get a break that Wilson does not. In other

⁵³ Press Briefing, U.S. Census Bureau, 2003 Income and Poverty Estimate from the Current Population Survey (Aug. 25, 2004), *available at* <http://www.census.gov/hhes/income/income03/prs04asc.html> (last visited Feb. 1, 2005).

⁵⁴ *Ranum*, 2005 WL 161223, at *6.

words, once the *offense* characteristics have been fully considered, should Wilson serve more time than Ranum because of his *offender* characteristic of being from a lower socioeconomic status. Congress has directed – and this court agrees – that socioeconomic status must not be considered.

3. Other Offender Characteristics Deserve the Modest Weight Assigned by the Commission.

Apart from the forbidden characteristics, many other offender characteristics can generally be taken into account (as explained earlier) only within the relevant Guidelines range. *Ranum* appears to find this restriction too confining and contends that the courts should routinely consider these factors as reasons for going outside the Guidelines. *Ranum* singles out as possibly justifying outside-the-Guidelines sentences such factors as family ties and responsibilities, lack of guidance as a youth, age, vocational skills, mental and emotional condition, physical condition including drug or alcohol dependence, employment record, and civic and military contributions.⁵⁵ Again, defendant Wilson asks this court to follow *Ranum*'s approach by considering such factors.⁵⁶

This approach is inconsistent with congressional mandates. In passing the Sentencing Reform Act, Congress required the Sentencing Commission to investigate whether and to what extent many of these factors were relevant to sentences. Congress directed that, in creating the Guidelines, the Commission “shall consider whether the following matters, among others, with respect to the defendant, have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence, and shall take them into account only to the extent that they do have

⁵⁵ *Ranum*, 2005 WL 161223, at *1.

⁵⁶ Defendant's Sentencing Memo. Regarding Application of *U.S. v. Booker* at 12.

relevance – [listing factors].”⁵⁷ Most of the restrictions that *Ranum* finds problematic have been in place since the Guidelines initial promulgation in 1987. Congress has had nearly two decades to reject any of these restrictions if they were inconsistent with the basic purposes of sentencing. Instead, Congress has (if anything) moved to tighten up these restrictions.

One illustration comes from the family ties Guidelines, which provides that “family ties and responsibilities” are “not ordinarily relevant” to determining whether a sentence should be outside the Guidelines.⁵⁸ Congress has not questioned this provision since its promulgation in November 1, 1987. To the contrary, in 2003 in the PROTECT Act, Congress directly amended this policy statement for certain cases. Congress provided that for child sex abuse cases, this provision would be changed from indicating that family ties “are not ordinarily relevant” to family ties “are not relevant” in determining whether to impose a sentence below the Guidelines range.⁵⁹

To be sure, this amendment (like others in the PROTECT Act) directly applies only to certain child sex abuse offenses. But this amendment is surrounded by many additional amendments designed to make it more difficult for courts to depart downward from the Guidelines in all cases. For instance, the PROTECT Act required district courts to include written reasons for any departure in the judgment and commitment order and to base all departures on factors furthering the statutory purposes of sentencing.⁶⁰ The Act also directed appellate courts to take a more stringent review of departures by changing the standard of review to *de novo* and requiring the Department of Justice

⁵⁷ 28 U.S.C. § 994(d).

⁵⁸ U.S.S.G. § 5H1.6 (policy statement).

⁵⁹ Pub. L. 108-21, Section 401(b)(4) (eff. Apr. 30, 2003).

⁶⁰ 18 U.S.C. § 3553(c).

to more aggressively challenge departures. Most important, the Act directed the Commission to tighten up the Guidelines to “ensure that the incidence of downward departures are *substantially reduced*”⁶¹ Given this clear and recent legislative action, it is hard to understand how faithfully implementing the congressional intent could now justify varying from the Guidelines with even greater frequency on such grounds as family ties.

Ranum also concluded that it would not follow the Commission’s policy statement on lack of youthful guidance.⁶² The lack-of-guidance provision directs that “[l]ack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing are not relevant grounds in determining whether a departure is warranted.”⁶³ The lack-of-guidance provision overruled a 1991 Ninth Circuit decision – *United States v. Floyd*⁶⁴ – which had affirmed a district court’s downward departure based on a mitigating circumstance it characterized as “youthful lack of guidance.”⁶⁵ *Floyd* was described by one commentator as “frankly bizarre.”⁶⁶ Two members of the Sentencing Commission (Judge and former Chairman William Wilkins and John Steer) – later explained why *Floyd* was uniquely singled out to be effectively overruled by the Commission:

The strength of Commission disapproval of “lack of youthful guidance” as a basis for departure can be attributed to a number of factors. Among them was a

⁶¹ Pub. L. 108-21, Section 401(m), 117 Stat. 650, 674.

⁶² *Ranum*, 2005 WL 161223, at *1.

⁶³ U.S.S.G. § 5H1.12 (policy statement).

⁶⁴ 945 F.2d 1096 (9th Cir. 1991).

⁶⁵ *Id.* at 1099.

⁶⁶ Michael M. Baylson, *Mandatory Minimum Sentences: A Federal Prosecutor’s Viewpoint*, 40 FED. B. NEWS & J. 167, 169 n.35 (1993).

concern that this particular label, amorphous as it is, potentially could be applied to an extremely large number of cases prosecuted in federal court, thereby permitting judges wide discretion to impose virtually any sentence they deemed appropriate (within or below the guidelines). The unwarranted disparity that could result from such a wide-open path around the guidelines was inconsistent with [Sentencing Reform Act] objections as the Commission understood them. Moreover, departures predicated on this factor could reintroduce into the sentencing equation considerations of a defendant's socioeconomic background and other personal characteristics that Congress clearly intended the guidelines to place off limits.⁶⁷

In addition, the Commission acted only after receiving comments from around the country, facilitated by a *Federal Register* notice announcing the pendency of this amendment.⁶⁸ In the wake of all this careful study and consideration underlying the youthful guidance provision, it seems remarkable to quickly and without apparent consideration of the competing concerns to broadly announce (as *Ranum* seemingly has) that the provision is fundamentally at odds with the purposes of sentencing.

These examples could be multiplied. But the general point here is that *Ranum* provides no clear reasons for treating offender characteristics differently the “advisory” Guidelines.

4. Institutional Advantages of the Sentencing Commission.

As these illustrations hopefully make clear, whether and to what extent offender characteristics should make a difference in criminal sentences is exceedingly complex. The Sentencing Commission has spent many years calibrating the Guidelines so that offender characteristics receive appropriate weight under the Guidelines. It has placed some characteristics

⁶⁷ William W. Wilkins & John R. Steer, *The Role of Sentencing Guideline Amendments in Reducing Unwarranted Sentencing Disparity*, 50 WASH. & LEE L. REV. 63, 84-85 (1993).

⁶⁸ 57 FED. REG. 90-01 (proposed Jan. 2, 1992) (to be codified at U.S.S.G. § 5H1.12 (policy statement)) (requesting comment on whether Commission should amend its policy statement to provide expressly whether or not courts may consider defendant's lack of youthful guidance for departure from applicable Guidelines range)

– such as race and socioeconomic status – entirely off limits. Other characteristics (e.g., gambling addiction, lack of youthful guidance) can operate to affect a sentence, but only *within* a particular Guidelines range; they cannot justify a downward departure. Still others (e.g., family ties) are not “ordinarily relevant” for downward departures, but can justify such a departure in exceptional cases.

Without apparent analysis of the nuanced approach of the Guidelines, the history underlying these provisions, or the competing concerns involved, *Ranum* simply declares that the Guidelines’ approach “cannot be squared” with the requirement that the court consider the “history and characteristics of the defendant.”⁶⁹ The basis for *Ranum*’s declaration is not immediately clear. The Sentencing Commission has, of course, significant institutional advantages in determining whether use of certain factors can be squared with the purposes of punishment. Indeed, Congress commanded that the Commission make precisely this determination in drafting the Guidelines.⁷⁰ Since then, the Commission has monitored the Guidelines by collecting data on what factors courts are considering in thousands of cases around the country. The Commission also solicits public comment on proposed Guidelines changes through the *Federal Register* and holds hearings on the merits of those changes. During summer 2003, for example, as part of its complete review of departure issues, the Commission solicited and weighed public comment and held two public hearings to receive testimony from the Department of Justice, judges, federal defendants and prosecutors, and experts in the criminal law on downward departures.⁷¹

⁶⁹ *Ranum*, 2005 WL 161223, at *1.

⁷⁰ 28 U.S.C. § 994(d).

⁷¹ U.S. SENTENCING COMMISSION, REPORT TO CONGRESS: DOWNWARD DEPARTURES FROM THE FEDERAL SENTENCING GUIDELINES 18 (Oct. 2003).

More important, the Commission and the Congress have worked closely together to insure that the Sentencing Guidelines faithfully implement the congressionally-prescribed purposes of sentencing. In recent years, Congress has made clear its concern was not (as *Ranum* would have it) that offender characteristics are receiving too *little* attention in downward departure decisions, but rather too *much*. Thus, Congress directed – and the Commission implemented – a substantial reduction in the availability of downward departures from the otherwise-applicable Sentencing Guidelines.

In light of all these facts, this court continues to believe that the Guidelines allow appropriate consideration of the history and characteristics of defendants. Therefore, this court rejects defendant Wilson’s argument that it should give greater consideration to offender characteristics than called for by the Guidelines. Instead, in exercising its sentencing discretion, this court will give considerable weight to the recommended Guidelines sentence.

B. Educational and Vocational Training.

Ranum also contends that the Sentencing Guidelines may be inconsistent with another purpose of punishment – what is sometimes loosely described as “rehabilitation.” Congress has directed that in imposing sentence the courts must consider not only just punishment, deterrence, and incapacitation but also the need for a sentence “to provide the defendant with needed educational or vocation training, medical care, or other correction treatment in the most effective manner.”⁷² This provision, contends *Ranum*, “might conflict” with a Guidelines sentence because “[i]n some cases,

⁷² 18 U.S.C. § 3553(a)(1)(D).

a defendant's educational, treatment or medical needs may be better served by a sentence which permits the offender to remain in the community.”⁷³

It may be that *Ranum* is advancing the narrow claim that, in some cases, unusual medical needs or similar circumstances warrant a non-prison sentence. If so, the Guidelines already provide flexibility on this point. For example, the Guidelines provide that “extraordinary physical impairment” may be a reason for a downward departure: “in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.”⁷⁴ But defendant Wilson apparently reads *Ranum* as advancing a far broader position. Wilson urges the court to read *Ranum* as suggesting that rehabilitative goals may provide a justification for going below the Guidelines sentence. Wilson concedes the point made by this court in its earlier opinion – that Congress abolished parole as part of the Sentencing Reform Act.⁷⁵ But making a virtue out of a vice, he argues “the lack of such [a later assessment by the parole board] makes it all the more important for the district court to make this [rehabilitative] assessment at the time of sentencing.”⁷⁶

Wilson's position is capably argued but nonetheless without merit. For the court to give significant weight to the prospect that a defendant like him might at some indeterminate point in the future rehabilitate himself would be at odds with the whole structure of the Sentencing Reform Act.⁷⁷

⁷³ *Ranum*, 2005 WL 161223, at *2.

⁷⁴ U.S.S.G. § 5H1.3 (policy statement).

⁷⁵ *See Wilson*, 2005 WL 78552, at *2 (citing *Booker*, 125 S.Ct. at 757).

⁷⁶ Defendant's Sentencing Memo. Regarding Application of *United States v. Booker* at 11.

⁷⁷ *See generally* Ilene H. Nagel, *Structuring Sentencing Discretion: The New Federal Sentencing Guidelines*, 80 J. CRIM. L. & CRIMINOLOGY 883 (1990) (one of the first Sentencing

The impetus for the Sentencing Reform Act was the consensus that developed in the 1970s that the hoped-for rehabilitation of offenders was simply not taking place. The iconic statement of this position was Professor Robert Martinson's influential article, which succinctly concluded: "Rehabilitation, tested empirically, is a failure; 'nothing works' as a prison reform program to reduce recidivism."⁷⁸ As the Supreme Court later described it, "Rehabilitation as a sound penological theory came to be questioned and, in any event, was regarded by some as an unattainable goal for most cases."⁷⁹

On the heels of such conclusions, Congress turned to crafting the Sentencing Reform Act. In 1976, Senator Edward Kennedy introduced a comprehensive bill to establish sentencing guidelines.⁸⁰ Later, Senator Orrin Hatch would join Senator Kennedy to form a formidable bipartisan, legislative team.

The legislation that ultimately became the Sentencing Reform Act specifically rested on a rejection of the rehabilitative ideal. As the Senate Judiciary Committee explained in its report on the legislation:

Recent studies suggest that this [rehabilitative] approach has failed, and most sentencing judges as well as the Parole Commission agree that the rehabilitation model is not an appropriate basis for sentencing decisions. We know too little about

Commissioners helpfully outlining this history). This opinion draws heavily on Commissioner Nagel's article in describing the history.

⁷⁸ Robert Martinson, *What Works? – Questions and Answers About Prison Reform*, 1974 PUB. INTEREST, Spring 1984, at 22.

⁷⁹ *United States v. Mistretta*, 488 U.S. 361, 363 (1988) (citing N. MORRIS, THE FUTURE OF IMPRISONMENT 24-43 (1974); F. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL (1981)).

⁸⁰ S. 2699, 94th Cong., 2d Sess. (1976).

human behavior to be able to rehabilitate individuals on a routine basis or even to determine accurately whether or when a particular person has been rehabilitated.⁸¹

As a result of this inability to implement a rehabilitative scheme, the Congress created the Guidelines system we have today. In order to achieve greater honesty in sentencing, Congress simply abolished parole. With relatively minor exceptions, the time that the judge imposed was the time that the offender would serve.⁸²

In the wake of this flat rejection of rehabilitation as a goal of sentencing, it would be surprising to find it playing a prominent part in the purposes of sentencing laid out by Congress. And the provision that defendant Wilson cites as grounds for focusing on “rehabilitation” does not use this term. Instead, it says that court should consider the need for a sentence “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”⁸³ Given that federal prisons have extensive educational and vocational training programs as well as medical and other treatment facilities, it would be the rare case where the advisory Guidelines prison sentence would need to be ignored to provide this kind of treatment to the defendant. The Senate Report to the Sentencing Reform Act explained precisely this point:

It is understood, of course, that if the commission finds that the primary purpose of sentencing in a particular kind of case should be deterrence or incapacitation, and that a secondary purpose should be rehabilitation, the recommended guideline sentence should be imprisonment if that is determined to be the best means of assuring such

⁸¹ S. Rep. No. 98-225, 98th Cong. 1st Sess. at 38 (1983).

⁸² Hon. Stephen Breyer, Federal Sentencing Guidelines Revisited, Remarks at the Roman L. Hruska Institute, Univ. of Nebraska College of Law (Nov. 18, 1998) at 2.

⁸³ 18 U.S.C. § 3553(a)(1)(D).

deterrence or incapacitation, notwithstanding the fact that such a sentence would not be the best means of providing rehabilitation.⁸⁴

Courts also have great difficulty in predicting at the time of sentencing how a defendant will fare in prison and when he might become rehabilitated. In this case, for example, the court initially imposed a sentence of 188 months. The court cannot say today whether after completing, say, 100 months of his sentence, defendant Wilson will have rehabilitated himself to the point where he is no longer a threat to society.

Nor does the court have great confidence rehabilitation programs actually work. While it is possible that some programs might have success for some offenders,⁸⁵ it is virtually impossible for courts to have any success in identifying these offenders. The latest proof of this point came just a few weeks ago in a memorandum from the Director of Federal Bureau of Prisons, reporting that the “boot camp” program would be closed.⁸⁶ Despite anecdotal evidence of their success, the National Institute of Justice recently concluded (based on a decade of research) that there was no reduction in recidivism.⁸⁷

For all these reasons, this court will, in the exercise of its discretion, reject any broad claim that it should vary from the Guidelines because of the distant prospect of rehabilitating a defendant.

⁸⁴ S. Rep. 98-225, 1984 U.S.C.A.N. 3182, 3259 n. 288.

⁸⁵ See e.g., Robert Martinson, *New Findings, New Views: A Note of Caution Regarding Sentencing Reform*, 7 HOFSTRA L. REV. 243, 252 (1979).

⁸⁶ Memo. from Harley G. Lappin to all Federal Judges, Re: Intensive Confinement Center Program (Jan. 14, 2005).

⁸⁷ NAT’L INSTITUTE OF JUSTICE, CORRECTIONAL BOOT CAMPS: LESSONS FROM A DECADE OF RESEARCH (July 2003).

C. Following The Guidelines is the Only Way to Avoid Unwarranted Sentencing Disparity.

In relying on *Ranum* to urge a sentence lower than the Guidelines, Wilson also pays inadequate attention to the “need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”⁸⁸ This congressional command is one of the fundamental purposes underlying the Sentencing Reform Act.⁸⁹ As *Booker* explains, Congress’ “basic statutory goal in enacting the Guidelines was to provide a sentencing system that diminishes sentencing disparity”⁹⁰ and “to move the sentencing system in the direction of increased uniformity.”⁹¹

If the court were to vary from the Guidelines with any frequency, it would be impossible to achieve this congressional objective. As explained in the earlier opinion in this case:

The only way of avoiding gross disparities in sentencing from judge-to-judge and district-to-district is for sentencing courts to apply some uniform measure in all cases. The only standard currently available is the Sentencing Guidelines. If each district judge follows his or her own views of “just punishment” and “adequate deterrence,” the result will be a system in which prison terms will “depend on ‘what the judge ate for breakfast’ on the day of sentencing” and other irrelevant factors.⁹²

⁸⁸ 18 U.S.C. § 3553(a)(6).

⁸⁹ See S. REP. 98-225, at 38; see also *Mistretta*, 488 U.S. at 363 (1988).

⁹⁰ *Booker*, 125 S.Ct. at 760.

⁹¹ *Id.* at 761.

⁹² *Blakely v. Washington*, 124 S.Ct. 2531, 2533 (2004) (Breyer, J., dissenting). See generally Stephen Breyer, *The Federal Sentencing Guidelines and Key Compromises Upon Which They Rest*, 17 HOFSTRA L.REV. 1 (1988).

Ranum agrees that courts should “seriously consider the Guidelines.”⁹³ Nonetheless, *Ranum* contends that courts “should not follow the old ‘departure’ methodology. The guidelines are not binding, and courts need not justify a sentence outside of them by citing factors that take the case outside the ‘heartland.’”⁹⁴ *Ranum* goes on to conclude that “courts are free to disagree, in individual cases and in the exercise of discretion, with the actual range proposed by the guidelines, so long as the ultimate sentence is reasonably and carefully supported by reasons tied to the § 3553(a) factors.”⁹⁵

This court disagrees with *Ranum*’s analysis for both procedural and substantive reasons. On a procedural level, it is critical for courts to follow the “old ‘departure’ methodology.” *Booker* commands that “[t]he district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing.”⁹⁶ Departure provisions are, of course, part of “the Guidelines” that the court must take “into account” when imposing sentence. Unless the court calculates and then considers what the Guidelines advise as to a particular sentence in a particular case – that is, the initial Guideline sentence adjusted by any applicable departures – the court is not in a position to follow *Booker*’s requirements. Today, the Second Circuit reached this conclusion, holding that district judges should decide whether to impose a sentence “within the applicable Guidelines range *or within permissible departure authority*,” as opposed to a non-

⁹³ *Ranum*, 2005 WL 161223, at *2.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Booker*, 125 S.Ct. at 767.

Guidelines sentence.⁹⁷ As the Circuit explained, a “‘departure’ [is] not a sentence within the applicable Guidelines range, but it [is] nonetheless a ‘Guidelines sentence,’ *i.e.*, imposed pursuant to the departure provisions of the policy statements in the Guidelines, as well as the departure authority of subsection 3553(b)(1).”⁹⁸

An illustration may serve to demonstrate this point. Consider a case in which a war veteran illegally possessed a machine gun as a trophy of war. It is essentially meaningless to learn that the Guideline range for this offense is 27-33 months⁹⁹ without also taking into account the fact that the Guidelines themselves specifically suggest a downward departure for “lesser harms” on such facts.¹⁰⁰ Moreover, the Guidelines themselves create a basis for determining the extent of any departure. As Judge Easterbrook explained in a leading pre-*Booker* opinion, “[I]t is possible to formulate approaches that link the extent of departure to the structure of the guidelines.”¹⁰¹ With regard to the extent of the departure for the war veteran, for example, the Guidelines create a downward adjustment for possessing an illegal firearm for “collection purposes.” Although not directly applicable to the offense of possessing a machine gun,¹⁰² this adjustment might provide a reasonable

⁹⁷ *United States v. Crosby*, ___ F.3d ___, No. 03-1675 at 24 (2nd Cir. February 2, 2005) (emphasis added).

⁹⁸ *Id.* at 19 n.9.

⁹⁹ U.S.S.G. § 2K2.1(a)(5) (prohibited weapon is a level-18 offense).

¹⁰⁰ *See* U.S.S.G. § 5K2.11 (policy statement).

¹⁰¹ *United States v. Ferra*, 900 F.2d 1057, 1062 (7th Cir. 1990).

¹⁰² *See* U.S.S.G. § 2K2.1(b)(2) (reduction not applicable for a restricted weapons offense).

analogy for the extent of such a downward departure.¹⁰³ Whatever the appropriate extent of the departure, however, until a court first determines how far the Guidelines themselves recommend as a departure, it is not in a position to “consider” the sentence that the Guidelines recommend.

Following the “old departure methodology” is also important for purposes of allowing both the Sentencing Commission and the Congress to monitor how the new system is working. It was for this very reason, among others, that the PROTECT Act required courts to specifically state in writing their reasons for issuing a sentence outside the Guidelines range.¹⁰⁴ The Sentencing Commission and Congress will understandably still be quite interested in learning how often sentences under the post-*Booker* regime fall within or without the Guidelines, and for what reason.¹⁰⁵ Unless a district court is clear about how it arrived at a sentence – “showing its work” as one respected commentator colorfully put it¹⁰⁶ – that data collection process will be aborted.

It is important for courts to follow the traditional departure methodology for substantive reasons as well. Because the departure methodology guides the exercise of discretion – both as to whether to depart and as to the extent of any departure – use of that standard methodology by courts around the country will help to minimize unwarranted sentencing disparity. On the other hand, if the *Ranum* approach is followed, different courts will surely give different weights to the broadly-worded factors listed in the Sentencing Reform Act. The result will almost inevitably be that

¹⁰³ U.S.S.G. § 2K2.1(b)(2).

¹⁰⁴ 18 U.S.C. § 3553(c)(2).

¹⁰⁵ See Memorandum from Richardo H. Hinoja, Chair, U.S. Sentencing Comm’n, and Sim Lake, Chair, Criminal Law Committee of the Judicial Conference of the U.S., Regarding Documentation Required to be Sent to the Sentencing Comm’n (Jan. 21, 2005).

¹⁰⁶

http://sentencing.typepad.com/sentencing_law_and_policy/2005/01/always_remember.html.

defendants sentenced in the Eastern District of Wisconsin will serve different sentences for the same offense than similarly-situated defendants sentenced in the District of Utah. This would produce the “discordant symphony” of “excessive sentencing disparities” that the *Booker* majority stated would *not* be a consequence of its decision.¹⁰⁷

Ranum concludes by asserting that “*Booker* is not [] an invitation to do business as usual.”¹⁰⁸ In a narrow sense, this claim is true: *Booker* does require the court to make one new inquiry. After determining the Guidelines sentence (with any appropriate departure folded in), the court must still exercise its discretion to determine whether to vary from that sentence in light of the congressionally-prescribed purposes of sentencing. But it is important that courts do “business as usual” in one respect. In recent years, unwarranted sentencing disparity arising from judicial discretion has been dramatically reduced because of the Guidelines.¹⁰⁹ In a country committed to equal justice under the law – with a sentencing statute that mandates similar outcomes for similar crimes committed by similar offenders – this part of the court’s business must continue. The only realistic way to insure this is to follow generally the Guidelines.

Accordingly, for all these reasons, the court reaffirms its earlier analysis that, as a matter of discretion, it will give heavy weight to the Guidelines when determining a sentence. With respect

¹⁰⁷ *Booker*, 125 S.Ct. at 765.

¹⁰⁸ *Ranum*, 2005 WL 161223, at *2.

¹⁰⁹ 2004 SENTENCING COMMISSION REP. ch. 5, at 140, *available at* http://www.ussc.gov/15_year/15year.htm (last visited January 31, 2005) (“the guidelines have succeeded at the job they were principally designed to do: reduce unwarranted disparity arising from differences among judges”).

to defendant Wilson, the court reaffirms its discretionary decision to impose a prison sentence of 188 months.

CONCLUSION

One last point deserves brief discussion. Defendant Wilson has understandably challenged the severity of the Guidelines. Less understandable is the seemingly similar subtext in *Ranum* (and several other decisions tracking it) substantively disagreeing with the Guidelines severity. *Ranum* invites this reading when it reports that “[m]any judges have criticized the guidelines . . . for their unnecessary harshness in many cases.”¹¹⁰ It is perhaps no surprise, then, that *Ranum* imposed a sentence significantly *lower* than that advised by the Guidelines. Perhaps what are couched as procedural or technical objections to Guidelines nuances are, in truth, simply a basic difference of opinion about how harshly crimes should be punished.

If this suspicion is true, then it raises troubling implications. As discussed at greater length in this court’s earlier opinion,¹¹¹ the Guidelines have the backing of the public. According to sophisticated public opinion polling, “there is a fair amount of agreement between sentences prescribed in the guidelines and those desired by the members of the [public].”¹¹² This is hardly surprising. For nearly two decades, in an on-going dialogue with the Sentencing Commission, Congress has repeatedly reaffirmed its view that the Guidelines are not overly severe. Indeed, as

¹¹⁰ *Ranum*, 2005 WL 161223, at *2, n.1.

¹¹¹ *See Wilson*, 2005 WL 78552.

¹¹² *Id.* at 2005 WL 78552 at *5 (citing PETER H. ROSSI & RICHARD A. BERK, JUST PUNISHMENTS: FEDERAL GUIDELINES AND PUBLIC VIEWS COMPARED (1997)).

demonstrated by the PROTECT Act's recent significant restrictions on downward departures, Congress, if anything, takes the opposite view.

The decision about how harshly to punish crime in this country is a matter of legislative prerogative. As *Booker* plainly held: “The National Legislature is equipped to devise and install, long-term, the sentencing system, compatible with the Constitution, that Congress judges best for the federal system of justice.”¹¹³ However unhappy some may be with that allocation of power, that is the allocation our democratic system has created.

Yet paradoxically, *Booker* presents the judiciary with an opportunity to assume a greater role in sentencing decisions. For many years, judges have sought greater freedom from the Guidelines strictures.¹¹⁴ Those judicial pleas were accompanied by assurances that judges would use any newly-granted freedom responsibly. Now, as a result of shifting majorities in the *Booker* decision, a less rigid system of advisory Guidelines has been put in place – at least temporarily. The judiciary thus has the chance to demonstrate to Congress that it can be trusted with greater freedom – that it will responsibly exercise any discretion not to thwart congressional objectives, but to implement them discriminatingly in particular cases.

Should the courts fail to carry out congressional will, there should be little doubt what will follow. Congress can easily implement its desired level of punitiveness in the criminal justice system, through such blunderbuss devices as mandatory minimum sentences. It is far better, then, for courts to exercise their discretion to insure that Congress' intention is implemented today through

¹¹³ *Booker*, 125 S.Ct. at 768.

¹¹⁴ See, e.g., Kate Stith and José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (1998).

close adherence to the congressionally-approved Guidelines system, with only rare exceptions for unusual situations.

In this case, the court will achieve Congress' purposes by reaffirming its earlier discretionary decision to impose a prison sentence of 188 months – a sentence within the advisory Guidelines range. Judgment will enter accordingly.

SO ORDERED.

DATED this 2nd day of February, 2005.

BY THE COURT:

/S/
Paul G. Cassell
United States District Judge

tsh

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00882

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Barbara Bearnson, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Mark S. Kouris, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101

EMAIL

United States Marshal Service
DISTRICT OF UTAH

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2008 FEB -2 P 3:30

PAUL M. WARNER, United States Attorney (#3639)
JAN N. ALLRED, Assistant United States Attorney, (#4741)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	ORDER FOR ISSUANCE OF
)	WRIT OF GARNISHMENT
vs.)	
)	
ALISHA ANN GALLOWAY,)	
)	
Defendant,)	Case No. 2:00CR00297-001
)	
COOKIES BY DESIGN,)	Honorable Samuel Alba
)	
Garnishee.)	

Plaintiff United States of America (hereafter the "United States"), has made application for a Writ of Continuing Garnishment in the above-captioned matter pursuant to 28 U.S.C. § 3205 and has included the following information:

1. The judgment debtor's name, social security number (if known) and last known address;
2. The nature and amount of the debt owed and the facts that not less than 30 days have elapsed since

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demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and

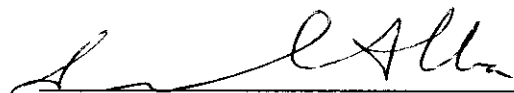
3. That the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

The Court finds that the United States has met the requirements of 28 U.S.C. § 3205(b)(1) and,

IT IS HEREBY ORDERED that the Clerk of the Court shall issue a Writ of Continuing Garnishment in the above-captioned matter.

DATED this 12 day of Feb, 2005.

BY THE COURT:



U.S. Magistrate Judge
United States District Court

United States District Court
for the
District of Utah
February 2, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cr-00297

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

US Probation
DISTRICT OF UTAH

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United States Marshal Service
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,

EMAIL

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE

,

EMAIL